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TO

# JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW REPORTS

## 1959—123 J.P.

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## A

### ADOPTION

1. Girl; male adopter; no special circumstances specified in order; duty of justices; appointment of guardian *ad litem*; report of court; full facts not stated; desire of grandmother to have custody omitted; grandmother not made respondent to application; Adoption Act, 1950, s. 2 (2); Adoption of Children (Summary Jurisdiction) Rules, 1949-1952, r. 7; r. 9 (*d*).—In 1952 an illegitimate daughter was born to one W. The child lived with her mother in the home of the maternal grandmother till April, 1957. W then went to live with a man named L and took the child with her. In October, 1957, she married L, and died on March 12, 1958. On March 14, 1958, L notified the welfare authority that he intended to make an application to adopt the child, who was still living with him. The local authority was appointed guardian *ad litem* for the purpose of the application. The maternal grandmother had been to see the child care officer who was in charge of the matter and told him that she disapproved of L and wished to have custody of the child herself and that she was endeavouring to obtain legal aid for the purpose of having the child made a ward of court. In the report made by the local authority as guardian *ad litem* to the court under r. 7 of the Adoption of Children (Summary Jurisdiction) Rules, 1949, no reference was made to these matters, and no notice of the hearing of the application for the adoption order was served on the grandmother, though r. 9 (d) required that a person who, in the opinion of the court ought to be a respondent, should be served. On June 16, 1958, a juvenile court made an adoption order in favour of L. The order contained no reference to special circumstances or to s. 2 (2) of the Adoption Act, 1950, which provides that an order shall not be made in respect of a female infant in favour of a sole male applicant unless the court is satisfied that there are special circumstances which justify it. An application was made by the grandmother for *certiorari* to quash the adoption order on the ground that the justices had failed to have due and proper regard to s. 2 (2) of the Act of 1950. The justices did not file any affidavit:—*Held*, that *certiorari* must issue as, in the absence of any affidavit from the justices, and having regard to the fact that in the order which they made they did not draw attention to any special circumstances, the court was bound to infer that they had omitted to consider the provisions of s. 2 (2), and (without expressly deciding the point), possibly, on the further ground that the report by the child care officer was not in any sense a full report. Further, if a full report had been put in, the justices might well have considered that under r. 9 (2) (as substituted by r. 3 of the Adoption of Children (Summary Jurisdiction) Rules, 1952), the application should have been served on the grandmother. (R. *v.* City of Liverpool Justices. *Ex parte* W. Q.B.D.) ... ... ... ... ... ... 152

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Aerial traffic; flying aircraft within 1,000 *yards* of " assembly " in open air; H-bomb protest march; air " close-up " for televising marchers;

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Air Navigation Order, 1954 (S.I. 1954, No. 829), art. 47, sch. II, r. 15 (1) (*d*), as amended by the Air Navigation (Fourth Amendment) Order, 1956.—Rule 15 (1) (*d*) of sch. II to the Air Navigation Order, 1954, as amended, prohibits the flying of an aircraft within 1,000 *yards* of an assembly in the open air of more than 1,000 persons assembled for the purpose of witnessing or participating in an organized event. An "assembly" within the meaning of the article means merely a gathering of persons whether stationary or in motion, and may be constituted by a procession. (Director of Public Prosecutions *v.* Roffey. Q.B.D.) ... ... ... ... ... ... ... ... 241

ANIMALS

Dog; suffering unmuzzled ferocious dog to be at large; lead attached to dog; physical means of control available, but not exercised; Metropolitan Police Act, 1839, s. 54 (2).—On February 16, 1958, the appellant was walking in a road with six or seven greyhounds on a master lead with individual leads attached to it when one of the greyhounds sprang at a passer-by and bit him. On March 14, 1958, the appellant was walking in a road with five or six greyhounds, all of which were on leads when one of the greyhounds leapt at a passer-by and bit her. The appellant was convicted of the offence on each occasion of suffering to be at large an unmuzzled ferocious dog, contrary to s. 54 (2) of the Metropolitan Police Act, 1839. On appeal by the appellant:—*Held*, that the convictions must be quashed as the dog on neither occasion was "at large" within the meaning of the subsection which applied only to the case where a person had no physical control of a dog at all and not to the case where a person had the physical means of controlling a dog by a lead but did not do so. (Ross *v.* Evans. Q.B.D.)... ... ... ... ... ... 320

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BYELAWS

Street; use of obscene language; annoyance; no direct evidence of any person being annoyed; inference of annoyance.—On a charge of an offence against a byelaw prohibiting the use of obscene language in a street to the annoyance of a person therein, where there is evidence that the defendant spoke audibly and that the nature of his language was obscene and calculated to annoy, justices are entitled to infer annoyance and convict, even though no positive evidence of any person having been annoyed was called by the prosecution. (Nicholson *v.* Glasspool. Q.B.D.) ... ... ... ... ... ... 229

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Children's home; gift to local authority of house to establish a children's home; bequest for benefit of one or more children in home; alternative purpose; hostel for "poor, aged, and infirm people."—The

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testator, by his will dated November 23, 1953, gave his dwelling-house to a local authority "to use and maintain the same as a children's home". He further bequeathed to the local authority the sum of £2,000 "to apply the yearly income therefrom for the benefit of such one or more of the children for the time being resident in the said house", provided that, if the corporation "shall discontinue the use of the said dwelling-house as a children's home", it should be used and maintained "as a hostel for young soldiers, sailors, airmen, or merchant seamen, or for poor, aged and infirm people of the neighbourhood". The local authority intended to accept the gift if they could use it as a home for old people:—*Held*, (i) the gift to the local authority for founding a children's home was a charitable gift (*Re* Cole (deceased) (1958) 122 J.P. 433, distinguished), but the gift for the benefit of children in the home was invalid because it could not be distinguished from a similar gift which was declared void in *Re* Cole; (ii) the proviso contained alternative trusts, and gifts for a home for poor aged people and a hostel for young servicemen or merchant seamen were both charitable gifts, and, therefore, the local authority was entitled to use the house for a home for aged people without first having established a children's home. (*Re* Sahal's Will Trusts. Alliance Assurance Co., Ltd. *v.* Attorney-General and Others. Ch.D.) ... ... ... ... ... ... ... ... ... 73

COMPULSORY PURCHASE

Compensation; costs incurred in formulating claim; legal and accountancy fees; Lands Tribunal Act, 1947, s. 3 (5), sch. 1, part 2, para. 5; loss of goodwill; business more profitable in new premises than in old; extra capital spent on new premises; increase of staff; some goodwill lost by move; valuation of loss.—The claimant had carried on business as an optician at freehold premises in Mile End Road, London, since 1912. The premises became subject to compulsory purchase, and notice to treat was served on January 14, 1952. On June 6, 1955, the claimant vacated the Mile End Road premises and moved his business to premises just over a mile away, of which he bought an 18 years' lease. The claimant, who had failed to find any nearer or more suitable premises, had to spend £3,000 on acquiring, repairing, fitting out and equipping these new premises, at which he had slightly more accommodation for his business, and at which he employed a fully qualified assistant instead of an apprentice. Notice of reference of the claim for compensation to the Lands Tribunal was given on December 30, 1955, but the hearing before the tribunal did not take place until February, 1957, by which time the business had been established in the new premises for 18 months, was increasing and was substantially more profitable than it had been at the old premises. The Lands Tribunal found that on the move the claimant had retained a considerable part, but not all, of his goodwill; that the goodwill of a business, which is an asset which can be realized at any time, increases in value the longer the business is carried on at the same premises or near thereto; but that the business carried on at the new business differed from that formerly carried on by the claimant in regard not only to the premises and their situation, but also in the employment of a fully qualified assistant, which was necessary to enable the increased business to be carried on. Taking all these factors into consideration, the tribunal assessed compensation for loss of goodwill by calculating the capital value of the goodwill at the old premises by multiplying the average annual profit during the claimant's last three years by three,

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calculating the capital value of the retained goodwill by multiplying the average annual profit during the 18 months the claimant had been at the new premises by one and a half, and subtracting the latter from the former. On appeal by the acquiring authority against this award:—*Held*, (i) legal and accountancy fees necessarily and properly incurred by a claimant for compensation for the compulsory acquisition of his land should be included in the compensation awarded. Skinners & Company *v.* Knight [1891] 2 Q.B. 542, distinguished; (ii) method of assessment of compensation by comparison of capital values was not wrong in principle; the question as to the multiplier to be taken, *i.e.*, the number of years' purchase, was essentially a question of fact and a matter of judgment for the tribunal having regard to the facts, figures and features of the case, and it had not been shown that there was error of law in the tribunal's method of approach to this question; and, therefore, the appeal must be dismissed. (London County Council *v.* Tobin. C.A.) ... ... ... 250

CONTRACT

Building contract; rise and fall clause; "rates of wages"; "wages"; weekly sums credited to each employee of contractor each week, payable as lump sum holiday money.—A local authority entered into a building contract which provided that "if during the currency of this contract (*a*) the rates of wages payable for any labour employed in the execution of the works shall in conformity with agreements between associations of employers and trade unions be increased above or decreased below the corresponding rates in force at the date of the contractor's tender", the contract price should be varied accordingly. During the currency of the contract the amount set aside each week under an agreed holiday scheme by the contractor for each of his employees (which amounts could be drawn by the employee as a lump sum when he took his holiday) was increased:—*Held*, the sums so set aside, being weekly sums which had to be credited to the employee each week, were within the expression "rates of wages", and so the increase entitled the contractor to vary the contract price. (Henry Boot & Sons, Ltd. *v.* London County Council. C.A.) ... ... ... ... ... ... 101

CRIMINAL LAW

1. Accessory before the fact; knowledge required to be proved; knowledge of type of crime essential; knowledge of precise crime unnecessary.—On a charge of being accessory before the fact to felony it must be proved that the prisoner knew that there was an intention to commit the type of crime which was in fact committed, but it is not necessary to prove that he knew of the intention to commit the precise crime or of its date or place. It is not sufficient to prove merely that he knew that some crime was intended. (R. *v.* Bainbridge. C.C.A.) ... ... ... ... ... ... ... ... ... 499
2. Appeal; further evidence; evidence of matters arising since conviction; Criminal Appeal Act, 1907, s. 9, s. 19.—Where a convicted person desires to call further evidence relating to matters which have arisen since conviction, *semble*, his proper course is to lodge a petition with the Home Secretary so that the Home Secretary can, if he thinks proper, refer the case to the Court of Criminal Appeal under s. 19 of the Criminal Appeal Act, 1907. R. *v.* Robinson (1917) 81 J.P. 152, not followed. (R. *v.* Thomas. C.C.A.) ... ... ... 533
3. Appeal; sentence; "order . . . made on conviction"; failure to surrender to bail; estreat of recognizance; term of imprisonment

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in default; Criminal Appeal Act, 1907, s. 21.—The appellant was committed for trial on charges of office-breaking and larceny, being granted bail in his own recognizances in the sum of £100. He failed to surrender to his bail and was subsequently arrested. At the trial he pleaded Guilty and was sentenced to three years' imprisonment. The court further ordered that his recognizance be estreated, and that, in default of payment, he should serve a further term of six months' imprisonment consecutive to the three years. On appeal against the sentence of six months:—*Held*, "any order . . . made on conviction with reference to the person convicted" in the definition of "sentence" in s. 21 of the Criminal Appeal Act, 1907, meant any order made in consequence of conviction; the sentence of six months in default of payment of the estreated recognizance had nothing to do with the conviction; and, therefore, the Court of Criminal Appeal had no jurisdiction under s. 3 (*c*) of the Act of 1907 to hear the appeal. R. *v.* London Sessions, *ex parte* Beaumont (1951) 115 J.P. 104, approved. (R. *v.* Harman. C.C.A.) ... ... 399

4. Capital murder; "murder done in course of theft"; theft already completed; murder by burglar to effect escape; Homicide Act, 1957, s. 5 (1).—Where a thief or burglar has already completed the theft but kills a person in order to effect escape and avoid detection, the murder is murder "done in the course . . . of theft" within the meaning of s. 5 (1) of the Homicide Act, 1957, and accordingly capital murder. (R. *v.* Jones. C.C.A.) ... ... ... ... ... 164

5. Evidence; admissibility of similar offences; series of alleged indecent offences against children; how far series may be regarded in determining truth of one incident; association between schoolmaster and pupil.—The passage in the judgment in R. *v.* Campbell (1956) 120 J.P. 359, at p. 362, which states that in cases of alleged sexual assaults on a number of children where the evidence on each child deals only with the assault on himself or herself, "a jury may be told that a succession of these cases may help them to determine the truth of the matter provided they are satisfied that there is no collaboration between the children to put up a false story", is not of universal application. Evidence of a succession of incidents may be admissible to help to determine the truth of the evidence of any one incident for the purpose of proving identity, intent, or guilty knowledge, or to rebut a defence of innocent association, but such evidence cannot be admissible where the defence is that the meeting or occasion for an incident in question never took place at all. *Semble*: with regard to the defence of innocent association, in the case of a schoolmaster and his pupil there may be nothing in the association which calls for any explanation. R. *v.* Campbell (*supra*) explained. (R. *v.* Chandor. C.C.A.) ... ... ... ... ... ... ... 194

6. Evidence; admissibility of statement; alleged threat; soldiers kept on parade by regimental sergeant-major till prisoner confessed; subsequent confession to sergeant of Special Investigation Branch; dissipation of original threat; murder; causation of death; bayonet wound; haemorrhage of lung; incorrect medical treatment; good chance of recovery if proper treatment given.—The appellant, a private in the King's Regiment, was convicted in Germany of the murder of a private of the Gloucestershire Regiment. The charge arose out of an incident on the night of April 13, 1958, between men of the King's Regiment and men of the Gloucestershire Regiment who were then sharing barrack accommodation, during which three men of the Gloucestershire Regiment, including Private C, received stab wounds. The judge-advocate admitted evidence (i) of

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a confession by the appellant to the regimental sergeant-major of the King's Regiment, who stated that he called a late night parade soon after the incident, at which he said that he would keep the company on parade till someone admitted the stabbing, and that the appellant eventually stepped forward and said: "I did the stabbing"; (ii) of a subsequent confession by the appellant to a sergeant of the Special Investigation Branch the following morning. The sergeant gave the appellant the usual caution and went on to refer to what had happened the night before and the appellant's admission to the sergeant-major, and the appellant replied: "Yes, I am not denying it. I stabbed three of them all right." Subsequently, he made a written statement to the same effect. On appeal:—*Held*, (i) that, though there was nothing improper in the action taken by the regimental sergeant-major, his conduct at the parade amounted to a threat, which rendered the appellant's first statement inadmissible, but, as the effect of any threat under which the first statement was made had been dissipated by the time when the appellant was interviewed by the sergeant of the Special Investigation Branch, the oral and written statements made to him were admissible: (ii) if at the time of death the original wound was still an operating and substantial cause, then death could properly be said to be the result of the wound even if some other cause of death was also operating, and the summing-up on causation was adequate. The appeal, therefore, must be dismissed. (R. *v.* Smith. C.-M.A.C.) 295

7. Evidence; character of prisoner; cross-examination on previous convictions; imputation on character of Crown witness; discretion of judge; Criminal Evidence Act, 1898, s. 1, proviso (*f*) (*ii*).—The appellant was charged at quarter sessions with obtaining a car by false pretences and receiving cheque forms knowing them to have been stolen. A detective-constable who gave evidence for the prosecution said that when the appellant was charged he admitted that he had got the car "on a dud cheque". Later, the appellant made a statement in writing in which he said that he had found the cheque book in the road. The appellant, who conducted his own defence, in the course of his cross-examination of the detective-constable suggested that the statement had been obtained from him by a threat that, if he did not speak, his wife would be charged. This was denied by the constable. The appellant later gave evidence himself and in the course of cross-examination repeated the allegation. Counsel for the prosecution then said that he wished to put "certain further questions". The chairman said that, while counsel was strictly entitled to do so, he himself would have thought it would not be necessary. Counsel then put to the appellant, and the appellant admitted, a number of previous convictions:—*Held*, now that it was clearly established that the judge had a discretion whether to allow cross-examination of this kind or not, there was no need to strain the words of proviso (*f*) (*ii*) to s. 1 of the Criminal Evidence Act, 1898, "unless . . . the nature or conduct of the defence is such as to involve imputations on the character of . . . the witnesses for the prosecution", in the favour of the defence, as had been done by several authorities, and the words should now be given their natural meaning; applying these principles to the present case, the court was of opinion that there had been an imputation on the character of the police officer within the meaning of the proviso, but the court were not satisfied that the chairman had exercised his discretion at all, because he thought that the prosecution were entitled to put the questions as of right and no warning had been

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given to the appellant either by counsel or the chairman that he was going too far, and it was the inevitable practice that this should be done; in these circumstances the court must hold that the cross-examination was inadmissible, but, as they were of opinion that no substantial miscarriage of justice had arisen by reason of the irregularity, they would apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, and affirm the conviction. (R. *v.* Cook. C.C.A.) ... ... 271

8. Gross indecency between males; attempt to procure; invitation understood by recipient; need of corroboration.—Although an apparently innocent invitation, albeit accompanied by an intention on the part of the invitor to commit an immoral act, does not amount to an attempt to procure the commission of an act of gross indecency between male persons, such an invitation, accompanied by an invitation making it clear to the recipient what is intended, does amount to such an attempt. In offences of this nature, corroboration is always to be looked for, whatever the age of the complainant, and it is the duty of the judge to give a clear warning to the jury that they should be careful not to convict in the absence of corroboration unless the evidence completely satisfies them of the guilt of the prisoner. (R. *v.* Gammon. C.C.A.) ... ... ... ... ... 410

9. Official secrets; act preparatory to commission of an offence under Acts of 1911 and 1920; interpretation of section of statute; substitution of "or" for "and"; construction less favourable to accused; doing of preparatory act an offence in itself; Official Secrets Act, 1920, s. 7.—By the Official Secrets Act, 1920, s. 7: "Any person who attempts to commit any offence under the principal Act [the Official Secrets Act, 1911] or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets *and* does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty" of an offence. In order to give intelligible meaning to the section, the word "or" must be read in place of the word "and" where italicised. Accordingly, a count in an indictment charging the prisoner that he "did an act preparatory to communicating to another person for a purpose prejudicial to the safety of the State documents calculated to be of use to an enemy by entering into an arrangement with one W whereby the said W was to secure a purchaser of certain documents used in a prohibited place and in the possession of" the prisoner, charges an offence known to the law and is a valid count, since the doing of an act preparatory to the commission of an offence under the Act of 1920 or the Act of 1911 is an offence in itself. (R. *v.* Oakes. C.C.A.) ... ... ... ... 290

10. Presumption of innocence; child between eight and 14; evidence sufficient to rebut.—A boy just under nine years old was charged at a juvenile court with housebreaking and larceny. Evidence was given before the justices, and subsequently on appeal at quarter sessions, that the boy came of a respectable family, had been properly brought up, and, apart from the matter before the court, was well-behaved:—*Held*, that the evidence was sufficient to rebut the presumption of innocence which arose by reason of his age, and that the justices and quarter sessions were entitled to find that there was sufficient evidence of a guilty state of mind to justify a finding of guilt. (B. *v.* R. Q.B.D.) ... ... ... ... ... 61

11. Prevention of crime; carrying offensive weapon without lawful authority or excuse; sheath knife; attempt to break into building by means of knife; use to intimidate caretaker; "injury to the

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person"; whether prisoner had with him offensive weapon; Prevention of Crime Act, 1953, s. 1 (1) (4).—By the Prevention of Crime Act, 1953, s. 1 (1): "Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence . . ." By subs. (4), "In this section . . . 'offensive weapon' means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him." "Causing injury to the person" in s. 1 (4) includes frightening or intimidating a person. To ascertain whether the prisoner "had with him", within the meaning of s. 1 (1), an article of the kind defined as an offensive weapon in s. 1 (4), regard should be had to the use which was in fact made of the article. It is not necessary to prove that the prisoner took the article out with him for the purpose of causing injury if, while he was out with it, he used it for that purpose. (Woodward *v.* Koessler. Q.B.D.) ... ... 14

12. Provocation; defence applicable only to murder. Evidence; character of prisoner; imputation on character of Crown witness; suggestion that witness invited prisoner to homosexual practices; liability of prisoner to cross-examination on previous convictions; Criminal Evidence Act, 1898, s. 1, proviso (*f*) (*ii*).—Provocation is available as a defence only on a charge of murder, and not on a charge of wounding or any other charge. The appellant was about to dismount from an omnibus on which he had been travelling when one T, a passenger, whom he knew, made a remark to him which, on the face of it, was of a trivial and innocent nature. The appellant thereupon made a violent attack on T. At the appellant's trial for unlawfully and maliciously wounding T, it was suggested to T in cross-examination by defending counsel that T meant by the remark, and the appellant understood him to mean, that they were to go off together and indulge in homosexual practices. T vehemently denied this. When the appellant gave evidence, the judge permitted prosecuting counsel to cross-examine him on his previous convictions: —*Held*, that, as no defence of provocation arose in the present case, the question put to T was an imputation on his character within the meaning of proviso (*f*) (*ii*) to s. 1 of the Criminal Evidence Act, 1898, which rendered the appellant liable to cross-examination on his previous convictions. *Semble*: even on a charge of murder where the defence of provocation does arise, a question of the nature put to the witness in the present case would render the prisoner liable to be cross-examined on his previous convictions. (R. *v.* Cunningham. C.C.A.) ... ... ... ... ... ... ... ... ... 134

13. Quarter sessions; bench warrant; committal for sentence; admission to bail pending appeal against conviction by magistrates; failure to appear; power to issue warrant; Criminal Justice Act, 1948, s. 29 (3) (*a*); Magistrates' Courts Act, 1952, s. 29.—By virtue of s. 29 (3) (*a*) of the Criminal Justice Act, 1948, which provides that on a committal for sentence quarter sessions shall be placed in the same position as if the offender had just been convicted before them on indictment, quarter sessions have power to issue a bench warrant where an offender, who has been committed to them for sentence under s. 29 of the Magistrates' Courts Act, 1952, and admitted to bail pending appeal against his conviction by the magistrates' court, fails to surrender to his bail. (R. *v.* Lloyd-Jones and Another. *Ex parte* Thomas. Q.B.D.) ... ... ... ... ... ... ... 52

14. Receiving stolen goods; property obtained in circumstances amounting to felony or misdemeanour; extent of knowledge which prosecu-

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tion must prove; proof of other stolen property having been in prisoner's possession; proof of previous conviction for dishonesty; Larceny Act, 1916, s. 33 (1), s. 43 (1).—Where a person is charged with receiving property obtained in circumstances which amount to felony or misdemeanour, it is sufficient to charge and prove that he knew that it fell into the general category of property obtained in circumstances amounting to felony or misdemeanour, as the case may be, and it is unnecesary to prove that he knew that it was obtained in circumstances amounting in law to the precise felony or misdemeanour by which it was in fact obtained. It is not, however, sufficient merely to prove knowledge that the property fell into the wider category of property dishonestly obtained:—*Per curiam*: Evidence adduced under s. 43 (1) of the Larceny Act, 1916, with a view to proof of guilty knowledge, that other stolen property has been found in the prisoner's possession or that he has been previously convicted of dishonesty is admissible only where the charge is that of receiving stolen property, and is not admissible where the charge is that of receiving property obtained in circumstances amounting to felony or misdemeanour. (Director of Public Prosecutions *v.* Nieser. Q.B.D.) ... ... ... ... ... ... ... ... 105

15. Reckless making of statement to induce agreement for acquiring securities; "reckless"; dishonesty or fraud; Prevention of Fraud (Investments) Act, 1939, s. 12 (1)).—By s. 12 (1) of the Prevention of Fraud (Investments) Act, 1939: "Any person who . . . by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces . . . another person—(*a*) to enter into . . . (i) any agreement for . . . acquiring . . . securities . . . shall be guilty of an offence." The word "reckless" in this subsection means "made not caring whether it be true or false", *i.e.*, a dishonest or fraudulent statement as distinct from one which is made with an honest belief in its truth. The word does not mean merely "very careless". (R. *v.* MacKinnon and Others. C.C.C.) ... 43

16. Sentence; corrective training; two previous convictions; prisoner placed on probation by quarter sessions; two subsequent convictions at different courts; prisoner brought back to quarter sessions for sentence; sentence of corrective training imposed; Criminal Justice Act, 1948, s. 8 (5).—By s. 8 (5) of the Criminal Justice Act, 1948: "Where it is proved to the satisfaction of the court by which a probation order . . . was made . . . that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period . . . the court may deal with him for the offence for which the order was made, in any manner in which the court could deal with him if he had just been convicted by or before that court with that offence." In June, 1958, the appellant pleaded Guilty at quarter sessions to housebreaking and larceny, and was placed on probation for three years. In August, 1958, he committed two offences of larceny and was sentenced to terms of imprisonment by different courts on two different occasions. He was brought back to quarter sessions in view of his breach of probation, and in September, 1958, was sentenced to three years' corrective training for the original offence. When the offence was committed, he was not eligible for corrective training and became eligible only if the two subsequent offences and convictions were taken into account:—*Held*, that, in view of the language of the section, quarter sessions was entitled to take into account the two convictions after the appellant had been placed on probation and to pass a sentence of corrective training accordingly. (R. *v.* Cox. C.C.A.) ... 136

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17. Sentence; maximum sentence; order that at end of imprisonment offender should return to Nigeria, with further imprisonment in default; invalidity of order.—A Nigerian was convicted at a magistrate's court and committed for sentence to quarter sessions as an incorrigible rogue under s. 5 of the Vagrancy Act, 1824. The recorder sentenced him to twelve months' imprisonment (the maximum sentence) and further ordered that at the end of such term of imprisonment as he should serve he should enter into a recognizance to return forthwith to Nigeria and not to return to this country for five years, and that, in default of entering into such recognizance, he should undergo a further six months' imprisonment:—*Held*, that, though an order binding over an offender to come up for judgment when called upon in lieu of sentence could lawfully include a condition requiring the offender to leave this country and not to return for a specified period, such a condition could not be included in an order of binding over to keep the peace made under the Justice of the Peace Act, 1361, which was the order made in the present case, and therefore, the order made by the recorder being one which could not lawfully be made, that order must be quashed, leaving the sentence of imprisonment to stand. R. *v.* McCartan (1958) 122 J.P. 465, explained. (R. *v.* Ayu. C.C.A.)... ... ... ... ... ... 76

18. Sentence; postponement; opportunity to prisoner to fulfil promise to make restitution.—It is wrong to postpone sentence in order to give a prisoner an opportunity of fulfilling a promise to make restitution. (R. *v.* West. C.C.A.) ... ... ... ... ... ... ... 243

19. Sentence; supervision order; discharged prisoner; failure to register with appointed society; liability to register address at appointed police station; "address"; no fixed abode during material night; liability to give reasonable identification of "place"; maximum sentence; Prison Act, 1952, s. 29 (1) (*b*), sch. 1, para. 1 (1), para. 2 (1), para. 4 (1).—By the Prison Act, 1952, sch. 1, para. 1 (1): "Any person to whom this schedule applies shall—(*a*) register at an appointed police station in any police area in which he is from time to time residing, the address of his residence . . ." By para. 2 (1): "If any person fails without reasonable excuse to comply with any of the requirements of the preceding paragraph, he shall be guilty of an offence and liable on summary conviction thereof to imprisonment for a term not exceeding six months . . ." By para. 4 (1): ". . . a person shall be deemed to reside at any place of whatever description at which he spends a night." The appellant, to whom sch. 1 applied, arrived in Portsmouth on February 18, 1959, and was arrested on February 20 and charged with having failed to register his address at a police station. He elected to be tried by a jury and was convicted. He stated that at the material time he had no fixed abode and spent the days wandering about Portsmouth and sleeping in bus shelters:—*Held*, (i) that the conviction was right, as "address" in sch. 1 to the Act of 1952 was not limited to a postal address and it was possible for the appellant to comply with the obligation to register his address at the police station by giving a reasonable identification of the places where he had spent the night; (ii) that no defence was afforded to the appellant by the fact that the appointed society had not informed the appellant that they had given the statutory notice to the Commissioner of Police for the Metropolis, as the appellant had not on his discharge notified any address to the society and the society could not, accordingly, have taken any steps to inform the appellant. The maximum term of imprisonment for an offence against para. 2 (1)

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of sch. 1 is six months, whether the offence is dealt with summarily or on indictment or the election of the accused person. (R. *v.* Bishop. C.C.A.) ... ... ... ... ... ... ... ... 416

20. Sentence; two offences; probation order in respect of one; detention in detention centre in respect of the other; invalidity of probation order.—The appellant pleaded Guilty at quarter sessions to an offence of storebreaking and larceny and also to an offence of storebreaking with intent to steal. In respect of the first offence he was sentenced to three months' detention in a detention centre, and in respect of the second he was placed on probation for two years. Subsequently, he was convicted at a magistrates' court of larceny and was fined. Later, he was brought back to quarter sessions to receive sentence for the offence for which he had been placed on probation and was sentenced to borstal training:—*Held*, that, though the express language of the Criminal Justice Act, 1948, did not forbid such a course being adopted where there were two separate offences charged in separate counts, the making of a probation order in such circumstances was contrary to the spirit and intention of the Act, and the court must, therefore, quash the probation order and substitute for it an order for detention in a detention centre for three months, to run concurrently with the order on the first count. In the result, as the sentence of borstal training had been imposed in respect of a breach of the probation order and as the probation order had been quashed, the borstal sentence must also be quashed. (R. *v.* Evans. C.C.A.) ... ... ... ... ... ... ... ... ... 128

21. Sexual offence; child; alleged series of assaults by schoolmaster on several pupils; summing up; how far succession of cases may be considered in determining truth of one incident.—The passage in R. *v.* Campbell (1956) 120 J.P. 359, at p. 362, which states that on charges of sexual assaults on a number of children, where the evidence of each child deals only with the assault on himself or herself, "a jury may be told that a succession of these cases may help them to determine the truth of the matter provided they are satisfied that there is no collaboration between the children to put up a false story" is not to be regarded as being of universal application. Though there are many cases in which evidence of a succession of incidents may properly be admissible to help to determine the truth of any one incident (*e.g.*, to prove identity, intent or guilty knowledge, or to rebut a defence of innocent association), evidence of a succession of incidents cannot be relevant where the defence is that the meeting or occasion for the incident in question never took place at all. (R. *v.* Chandor. C.C.A.) ... ... ... ... ... ... ... 131

22. Trial; plea; indictment containing three counts; plea of Guilty to two and Not Guilty to one; jury present in box, but not sworn; jury sworn after plea and trial proceeded with; no objection or request for warning by defending counsel; validity of conviction.—The appellant pleaded Guilty to the first and third counts of an indictment and Not Guilty to the second. During arraignment the jury were in the box waiting to be sworn and after the plea they were sworn to try the second count, there being no objection by defending counsel and no juror being challenged. Defending counsel did not request the judge to give the jury a warning, when considering their verdict on the second count, to disregard the pleas of Guilty to the first and third counts. The jury convicted on the second count:—

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*Held*, that, if what happened was to be regarded as an irregularity, it was the duty of counsel to direct the attention of the court of trial to it timeously, and, as that had not been done, the conviction would not be interfered with on appeal. R. *v.* Darke (1937) 26 Cr. App. R. 85, distinguished. R. *v.* Neal (1949) 113 J.P. 468; [1949] 2 All E.R. 438; [1949] 2 K.B. 590 referred to. (R. *v.* Lashbrooke. C.C.A.) 138

23. Trial; postponement; committal to Crown Court on charge of felony; absence of prosecutor from England; case twice respited to next session on application of Crown; third application by Crown; right of accused to be discharged; Habeas Corpus Act, 1679, s. 6.—In December, 1958, the defendant was committed to the Crown Court at Liverpool on a charge of robbery with aggravation, contrary to s. 23 (1) (*a*) of the Larceny Act, 1916. The court, which was set up under the Criminal Justice Administration Act, 1956, s. 1, sat at least 11 times a year. As the complainant, a seaman, was not in the country when the case came before the court in January, 1959, an application by the Crown to respite the case to the next session was granted and the defendant was released on bail. A similar application was granted when the case came before the court in February, 1959, and the defendant was allowed to remain on bail. When the case again came before the court in March, 1959, the Crown applied for the case to be further respited as the complainant would not be back in England until July, 1959. On the question whether the defendant was entitled to be discharged under s. 6 of the Habeas Corpus Act, 1679:—*Held*, the benefit of s. 6 of the Habeas Corpus Act, 1679, depended on the observance of the procedural conditions precedent set out in the section, and, as these had not been complied with, the defendant was not entitled to be discharged under the section, but, in the exercise of the court's discretionary power, an order would be made that the case should lie on the file and not be further proceeded with without an order of the court. (R. *v.* Campbell. Crown Court, Liverpool) ... ... ... ... ... ... ... ... 361

24. Wagering fraud; betting transactions with bookmaker; transactions fraudulent from outset; false representations with regard to identity; intention not to pay losses; Gaming Act, 1845, s. 17.—The appellants visited various places in Hampshire and Dorset. One of them would ring up a local bookmaker, giving a false name and pretending that he was a foreman or a person engaged on a works contract. He would then ask the bookmaker to accept him under the assumed name as his client for the purpose of placing bets on behalf of workmen. When the bookmaker did this, and the bet proved to be a winning bet, one or other of the appellants collected the winnings. On two occasions one of the appellants did pay small losing bets, but on all other occasions, when the bet proved to be a losing bet, or when the bookmaker made further inquiries, or asked for payment on losses, the appellants moved on to some other place:—*Held*, that the appellants were rightly convicted of fraud in wagering, contrary to s. 17 of the Gaming Act, 1845, as at the time of the making of the bets they intended to accept the money if they won, but not to pay if they lost any substantial sum, and were, therefore, fraudulent from the outset; and that it was not necessary, to constitute this offence, that the money should have been won through some fraud in the race itself. R. *v.* Leon (1944) 109 J.P. 58, applied. (R. *v.* Clucas. R. *v.* O'Rourke. C.C.A.) ... ... ... ... ... ... ... ... ... 203

E

EXTRADITION PAGE

1. Discharge of fugitive; power of Court of Appeal; original, not appellate, jurisdiction; Fugitive Offenders Act, 1881, s. 10.—The appellant, on the refusal of a Divisional Court of the Queen's Bench Division to make an order under the Fugitive Offenders Act, 1881, s. 10, discharging him from custody, appealed to the Court of Appeal who dismissed the appeal on the ground that they had no jurisdiction to entertain the appeal. By s. 10 the power to make the order sought is given to a "superior court", which, by s. 39, means, in England, "Her Majesty's Court of Appeal and High Court."—*Held*, the reference to the Court of Appeal in s. 39 confers on that Court original, but not appellate, jurisdiction, and, therefore, the Court of Appeal rightly decided that it had no jurisdiction to entertain the appeal. (De Demko *v.* Home Secretary and Others. H. of L.) ... ... 156

2. Fugitive offender; evidence of offences to be given by expert in local law; inherent jurisdiction of Divisional Court to remit case for further evidence; Fugitive Offenders Act, 1881, s. 9.—Where the extradition of an alleged fugitive offender under the Fugitive Offenders Act, 1881, is sought, evidence that the offences come within s. 9 of the Act must be given by an expert on the local law. This evidence may be given either in the form of a deposition which comes to England with the warrant or by oral evidence before the magistrate in England. The applicant appeared before the chief metropolitan magistrate under a warrant of arrest issued in Kenya in respect of 11 offences alleged to have been committed there and was detained in prison pursuant to an order of committal. The evidence before the magistrate raised the presumption that the applicant had committed the offences, but the only evidence before him with regard to the manner in which the offences were punishable in Kenya was contained in an order of the senior resident magistrate at Nairobi for the issue of the warrant of arrest. The document set out the offences charged, each being followed by the words "rendering the offender liable to" [three years in regard to each of the nine offences]. By s. 29 of the Act of 1881 "judicial documents stating facts" may be received in evidence. On an application by the applicant for *habeas corpus*:—*Held*, (i) what was set out in the order of the magistrate at Nairobi was a statement of law and not of fact, and, as it had not been shown by any proper evidence that the offences were punishable in Kenya by "imprisonment with hard labour for a term of 12 months or more, or by any greater punishment," there was no evidence before the chief magistrate that the alleged offences came within s. 9 of the Act of 1881; (ii) the Divisional Court had inherent jurisdiction in a proper case to remit the matter to the chief magistrate, and the present case would be remitted for him to receive evidence with regard to the local law. (*Re* Shuter. Q.B.D.)... ... 459

3. Discharge of fugitive; detention; case remitted to magistrate to hear evidence on law of Kenya; committal to prison under fresh warrant to await return to Kenya; detention for over one month after committal; "sufficient cause"; Fugitive Offenders Act, 1881, s. 7.—By s. 7 of the Fugitive Offenders Act, 1881: "If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's Dominions to await his return, is not conveyed out of that part within one month after such committal, a superior court, upon application by or on behalf of the fugitive . . . may, unless sufficient cause is shown to the contrary, order the fugi-

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tive to be discharged out of custody." On June 17, 1959, the applicant was committed to prison by the chief metropolitan magistrate under the Fugitive Offenders Act, 1881, to await his removal to Kenya where, it was alleged, he had committed serious offences. On an application by the applicant for *habeas corpus*, the court remitted the matter to the magistrate to hear evidence on the law of Kenya, which the chief magistrate did on July 15, when he committed the applicant to prison under a fresh warrant. An air passage was booked on July 21 by the Colonial Office for the applicant and two officers of the Kenya Police, who were on leave in the United Kingdom and undertook to escort the applicant back to Kenya, on an aircraft due to leave England on August 15. The applicant's solicitor was informed of these arrangements and raised no objection. The air passage was, however, cancelled by the British Overseas Airways Corporation, and the applicant was still in custody on August 17. The applicant applied to be discharged under s. 7 of the Act of 1881 on the ground that he had not been conveyed out of the United Kingdom within one month of the date of committal:—*Held*, (i) that the word " may " in s. 7 was to be construed as " shall," and, therefore, the section prohibited a fugitive being detained in custody for more than a month from the date of committal, unless sufficient cause was shown to the contrary; (ii) " sufficient cause " did not relate solely to something outside the control of the relevant authorities, but entitled the court to consider the reasonableness of what was being done; (iii) in the circumstances of the present case, particularly having regard to s. 6 of the Act, the applicant was not being detained unreasonably; and the application for discharge would, therefore, be refused. (*Re* Shuter. Q.B.D.) ... ... ... ... ... ... 534

H

HABEAS CORPUS

1. Criminal matter; application refused by Divisional Court of Queen's Bench Division; no right to apply on similar facts and grounds to another Divisional Court of same Division.—An applicant for a writ of *habeas corpus* in a criminal matter, whose application has been heard by a Divisional Court of the Queen's Bench Division, is not entitled to be heard on an application based on the same facts and grounds by another Divisional Court of the same Division. *Quaere*, whether such an applicant is entitled to go from judge to judge of the Queen's Bench Division in term time. (*Re* Hastings. Q.B.D.) ... ... ... ... ... ... ... ... ... 79

2. Criminal matter; application refused by Divisional Court of Queen's Bench Division; right to apply to Divisional Court of Chancery Division.—The applicant for a writ of *habeas corpus* in a criminal matter who had had his application refused by two Divisional Courts of the Queen's Bench Division composed of different judges, made a similar application on the same grounds to a Divisional Court of the Chancery Division:—*Held*, the applicant had no right to go from Division to Division or from judge to judge of the High Court of Justice, for when the Divisional Court of the Queen's Bench Division, the proper court according to the rules, had made an order (which was an order of the one High Court of Justice) deciding the application, the matter was finally concluded, and, therefore, the Divisional Court of the Chancery Division had no jurisdiction to hear the application. (*Re* Hastings. Ch.D.) ... ... ... ... ... 266

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3. Appeal; criminal cause or matter; allegation that unlawfully incarcerated under sentence of criminal court; no jurisdiction; Supreme Court of Judicature (Consolidation) Act, 1925, s. 31 (1) (*a*).—The question whether a person is rightly incarcerated under the sentence of a criminal court is a criminal cause or matter within s. 31 (1) (*a*) of the Supreme Court of Judicature (Consolidation) Act, 1925, and, therefore, no appeal lies in such a case from the decision of a Divisional Court refusing a writ of *habeas corpus*. (*Re* Hastings. C.A.)... 502

HIGHWAYS

Refuge; proposal by highway authority to erect refuge without compensation on access from garage to carriageway; erection on soil of highway, but not on carriageway; Public Health Act, 1875, s. 149; Public Health Acts Amendment Act, 1907, s. 18 (*c*); Road Traffic Act, 1956, s. 45 (1).—The plaintiffs owned a corner plot at the intersection of two roads, the S road and the V road. Their land lay to the south of the V road (which ran approximately east and west) and to the west of the S road (which ran approximately north and south). Both highways were repairable by the inhabitants at large. In 1932 the plaintiffs or their predecessors, with planning permission, had erected a garage on the land, and access to the two highways had been constructed at the same time under the Public Health Acts Amendment Act, 1907, s. 18. One access was a forty foot access to the V road, which crossed a verge (which had been dedicated in 1928 as part of the highway) and gave access to the carriageway of the V road. The defendants, who were the highway authority, proposed to erect a street refuge in the middle of the forty foot access to the V road, where the access emerged on the carriageway of the highway, contending that they had power to do this under the Road Traffic Act, 1956, s. 45, without paying compensation, or under the Public Health Act, 1875, s. 149. By s. 45 (1) of the Act of 1956, a highway authority has power to construct works "in the carriageway . . . for providing places of refuge" for pedestrians crossing the road. By s. 149 of the Act of 1875 the urban authority shall cause from time to time highways repairable by the inhabitants at large to be "altered":—*Held*, the refuge would not be in the carriageway of the V road although it would be in the highway, and so it was not authorized by the Road Traffic Act, 1956, s. 45; even if the Public Health Act, 1875, s. 149, applied to refuges at all, that section did not cover the construction of the proposed refuge in the circumstances of the present case; and, accordingly, the defendants were not empowered to construct the refuge under those enactments. *Per curiam*: para. (*c*) of s. 18 of the Public Health Acts Amendment Act, 1907, did not have the consequence that after the construction of works of access the access was deemed to be a carriageway of the highway. (Ching Garage, Ltd. *v.* Chingford Corporation. Q.B.D.)... 464

HOUSING

1. Clearance area; "resources" of council; requirement that local authority should be satisfied of the sufficiency of their resources before declaring clearance area; validity of resolution and of subsequent compulsory purchase order; Housing Act, 1957, s. 42 (1), proviso (*ii*), sch. IV.—Under the Housing Act, 1957, s. 42 (1), which confers power on a local authority to declare an area in their district to be a clearance area, the authority, by proviso (*ii*), must satisfy themselves before a resolution declaring a clearance area may be passed, that "the resources of the authority are sufficient for the

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purpose of carrying the resolution into effect ". A borough council declared a site owned by the applicant to be a clearance area, their resolution stating that reports of meetings of their housing committee and the finance committee had been considered and it was resolved that, where necessary, such reports as varied by the adopted amendments should be approved and adopted as minutes of the council. The council did not have before them actual figures of the probable cost involved. A compulsory purchase order was made and confirmed in relation to the site owned by the applicant. The applicant applied, under sch. IV, para. 2, to the Act of 1957 for the order to be quashed, on the ground that the local authority had not been satisfied of the sufficiency of their resources within the meaning of proviso (*ii*) to s. 42 (1), with the result that the clearance resolution was invalid. The chairman of the housing committee deposed that his committee had considered whether, and were satisfied that, the resources of the local authority were sufficient:—*Held*, the compulsory purchase order would not be quashed since it was competent to the local authority to be satisfied, without having specific figures before them, that their resources (which included their credit as well as their cash resources) were sufficient to carry the clearance resolution into effect, and here they had been so satisfied acting through their authorized committees. (Goddard *v.* Minister of Housing and Local Government and Another. Q.B.D.) ... ... 68

2. Requisitioned premises; release from requisition; contribution towards local authority's expenses by way of compensation; rate of contribution by Ministry of Housing and Local Government; Requisitioned Houses and Housing (Amendment) Act, 1955, s. 10 (1). —On June 6, 1955, by s. 1 of the Requisitioned Houses and Housing (Amendment) Act, 1955, the right to possession of a requisitioned house occupied by the licensee of the Minister of Housing and Local Government vested in the local authority. On January 28, 1956, the local authority gave notice to the owner of the house, in accordance with s. 4 (1) of the Act, inviting him to accept the licensee as a statutory tenant. The owner accepted the invitation in the statutory form dated March 23, 1956. The rent was paid weekly, and the local authority's right to possession terminated on April 2, 1956, on which date the licensee became statutory tenant of the owner. Compensation, under s. 4 (2) (*c*), to the owner for loss of his right to vacant possession on release of the house from requisition was paid by the local authority on May 2, 1956. The local authority contended that the Minister's contribution should be at the rate of 100 *per cent.* under s. 10 (1) (*a*) as the compensation was a payment which fell to be made in the period ending with March 31, 1956. The Minister contended that the contribution should be at the rate of 75 *per cent.* under s. 10 (1) (*b*) as the payment fell to be made at a date after March 31, 1956:—*Held*, the compensation to the owner became payable when the invitation was accepted on March 23, 1956, and was a payment within s. 10 (1) (*a*), under which the local authority was entitled to receive contribution from the Minister at the rate of 100 *per cent.* (East Ham Corporation *v.* Ministry of Housing and Local Government. Ch.D.) ... ... ... ... ... ... 542

HUSBAND AND WIFE

1. Appeal by wife to Divisional Court; case sent for re-hearing before new panel of magistrates on questions of fact; right of wife's counsel to read judgment of Divisional Court to court on re-hearing.

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—On April 18, 1957, complaints by the wife against the husband of desertion and wilful neglect to maintain her were dismissed by a court of summary jurisdiction. The wife appealed and on October 17, 1958, the Divisional Court ordered a re-hearing of the case before a fresh panel of magistrates as it considered different inferences of fact should have been drawn from the evidence from those which were drawn by the court below. On December 29, 1958, when the case was before the new panel of magistrates, counsel for the wife attempted to read the Divisional Court judgment, but the magistrates refused to hear what the Divisional Court had said until they had heard the evidence and drawn their own conclusions therefrom. On an appeal by the wife against this ruling:—*Held*, (i) there was the widest possible distinction between Divisional Court judgments where magistrates had erred on points of law and where they had drawn wrong inferences of fact, and the magistrates were right in taking the view they did as the case was one of pure fact, and, at a trial *de novo*, it was proper to exclude inferences of fact drawn in the past either by another court of summary jurisdiction or by the Divisional Court; (ii) it was the duty of the clerk of the court, who alone knew the judgments of the Divisional Court on questions of fact, to keep those judgments secret to ensure a fair and proper trial. (Claxton *v.* Claxton. P.D. & A.) ... ... ... ... ... 145

2. Maintenance; agreement; variation by court; jurisdiction; permanent or continuing financial provisions, but agreement not made for the purposes of living separately; Maintenance Agreements Act, 1957, s. 1 (1), (3).—The parties were married in 1931, and in 1953 the wife discovered that the husband had been carrying on an adulterous association with another woman. A reconciliation at the husband's instance was agreed on terms which included financial arrangements, and these were subsequently incorporated in a deed dated May 1, 1954. The deed did not provide either for the resumption of cohabitation or for separation, but it included covenants by the husband to make payments during the joint lives of himself and the wife and to leave her property by his will. The parties resumed cohabitation and lived together until August, 1956, when the husband left the matrimonial home. He now applied to the court to vary the financial arrangements made by the deed, alleging that under the Maintenance Agreements Act, 1957, s. 1, which by subs. (1) applied to any agreement in writing between the parties to a marriage " for the purposes of their living separately ", there was jurisdiction under subs. (3) to vary the deed:—*Held*, the court had no jurisdiction under s. 1 of the Maintenance Agreements Act, 1957, to vary the deed since, notwithstanding the continuance or permanence of the financial provisions made by it, it had not in fact been made for the purposes of the parties living separately within the meaning of s. 1 (1). (Ewart *v.* Ewart. P.D. & A.) ... ... ... ... ... ... ... ... ... 63

3. Maintenance; order made in Jamaica; rescission; application in England for summons to rescind; Maintenance Orders (Facilities for Enforcement) Act, 1920, s. 1 (1), s. 4.—On January 23, 1957, a maintenance order was made in Jamaica against the applicant on the ground that he had deserted his wife and wilfully refused to maintain her. The applicant was then in England, his wife being in Jamaica. On February 11, 1958, the applicant's wife came to England at the request of the applicant, who had sent her part of the expenses for the journey. She resumed cohabitation with the applicant in Brixton for about a month. The applicant applied at Lambeth magistrates'

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court, where the order of the Jamaican court had been duly registered, for a summons to rescind the order made in Jamaica. The magistrate held that he was bound by Pilcher *v.* Pilcher (1955) 119 J.P. 458, to hold that no such summons as was sought could be issued under the Maintenance Orders (Facilities for Enforcement) Act, 1920, and refused to issue the order. On application for *mandamus* directing the magistrate to issue the summons:—*Held*, an application to rescind a provisional order made in some part of Her Majesty's Dominions could be made under s. 4 (6) of the Act following the appropriate procedure, but s. 1 (1) contemplated only a summons to enforce an order, and not an application to issue a summons for rescission, and the magistrate was right in holding that he was bound by Pilcher *v.* Pilcher to refuse to issue the summons. (R. *v.* Rose. *Ex parte* McGibbon. Q.B.D.) ... ... ... ... ... ... 374

4. Maintenance; wilful neglect to maintain; no fault on part of husband; no knowledge of deterioration in wife's circumstances.—On October 6, 1953, the wife obtained from a magistrates' court an order that the husband should pay her £2 17*s.* 6*d.* per week. This sum was punctually and regularly paid. In May, 1958, the wife complained to the same magistrates' court under the Summary Jurisdiction (Married Women) Act, 1895, s. 4, alleging that the husband had been guilty of wilful neglect to provide reasonable maintenance for her. It was not proved that the husband knew, before the date of the complaint, that the sum of £2 17*s.* 6*d.* a week was no longer sufficient for her needs or of any change in her circumstances. On June 3, 1958, the magistrates' court found the wife's complaint proved on evidence that the wife was suffering hardship and that the husband could afford to pay, and they ordered the husband to pay the wife £2 a week:—*Held*, the order of June 3, 1958, would be set aside since the husband, who had punctually paid under the order of October 6, 1953, and was ignorant of any change in the wife's circumstances, could not be held guilty of "wilful neglect to provide reasonable maintenance for her", a phrase which implied an element of misconduct. (Jones *v.* Jones. P.D. & A.) ... ... ... ... ... ... ... ... ... 16

5. Maintenance; wilful neglect to maintain; no matrimonial misconduct by husband; wife suffering from neurosis and incapable of resuming cohabitation; liability of husband.—The parties were married in 1948 and in 1952 a child was born. The birth of the child caused a gravely aggravated mental or nervous disorder in the wife which developed into an invincible repugnance to sexual intercourse with the husband. The parties separated, and on October 12, 1954, a magistrates' court found the husband guilty of desertion and made a maintenance order in the wife's favour under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. Thereafter the husband wrote to the wife letters which were found to contain a genuine offer to resume cohabitation which the wife refused to accept, and on August 23, 1957, the magistrates' court discharged the order. The husband continued to pay maintenance voluntarily for a short while, but then ceased to do so and the wife made a complaint to the same magistrates' court alleging that the husband had wilfully neglected to provide reasonable maintenance for her. The medical evidence was that the wife suffered from a neurosis which produced an acute revulsion from any physical contact with the husband and that if she returned to him there would be a serious breakdown in her health. The wife did not allege that the husband was guilty of any matrimonial misconduct, but contended that he

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was liable to maintain her at common law and that his deliberate refusal to do so amounted to wilful neglect:—*Held*, the wife was not entitled to maintenance since her justification for refusing to cohabit with the husband involved no matter of complaint against him, and, therefore, there was no element of misconduct on his part to support a charge of wilful neglect to provide reasonable maintenance. Pinnick *v.* Pinnick [1957] 1 All E.R. 873, followed. *Per curiam*: where a wife is not in desertion, and there is no question of adultery, the National Assistance Board has an independent right against the husband under s. 42 and s. 43 of the National Assistance Act, 1948, to recover from the husband contributions towards the cost of public assistance to the wife; an order under s. 43 (5) (*b*) for the husband to maintain his wife could be made by virtue of the express liability of the husband to maintain the wife under s. 42 and would not necessarily impute a finding of wilful neglect. (Lilley *v.* Lilley. P.D. & A.) ... ... ... ... ... ... ... ... ... 19

6. Maintenance; liability of husband; enforced separation due to wife's ill-health; right to maintenance dependent on wife's intention to return.—As between husband and wife the husband cannot be guilty of wilful neglect to maintain the wife unless he is a wrongdoer, but the wrongdoing need be no more than failure to maintain. The husband's liability to maintain is not affected by an enforced separation due to the illness of the wife, including mental disorder, provided that the wife's intention to return to the husband subsists. During a marriage the wife developed an invincible repugnance, due to mental or nervous disorder for which she voluntarily underwent medical treatment, to sexual intercourse with her husband. The parties separated and a stipendiary magistrate found the husband guilty of desertion and ordered him to pay the wife maintenance. Later, the husband made the wife a genuine offer to resume cohabitation which she refused to accept and the magistrate discharged the order. The husband continued to pay maintenance voluntarily for a short while, but then ceased to do so and the wife made a complaint to the magistrate, alleging that the husband had wilfully neglected to provide reasonable maintenance for her. Medical evidence was given to the effect that if the wife returned to the husband, there would be a serious breakdown in her health. The wife, whom the magistrate found to be capable of making a rational decision and of forming an intention to desert, said in evidence that she was determined not to live with the husband. She did not allege that the husband was guilty of any matrimonial misconduct and conceded that he was not in desertion of her, but she contended that he was liable to maintain her at common law and that his deliberate refusal to do so amounted to wilful neglect. The husband contended that he was under no liability to maintain the wife since (i) he was guilty of no matrimonial misconduct, and (ii) she was in desertion:—*Held*, if the wife were not in desertion, a separation enforced by her illness would not disentitle her to maintenance, but she was capable of making a decision to desert the husband and, on the facts, had done so, and, therefore, she was in desertion and so was not entitled to maintenance. (Lilley *v.* Lilley. C.A.) ... ... ... ... ... ... ... ... 525

7. Maintenance order; discharge; application to vary or discharge made to different magistrates' court; transmission of information by original court to new court; Magistrates' Courts Rules, 1952 (S.I. 1952 No. 2190), r. 34 (2), (7).—Where an application to vary or discharge an order made by justices is made in a petty sessional division other

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than that in which the order was made the clerk to the original court should transmit to the new court with the complaint such information about the case as, in his opinion, it would have been desirable for the original court to have if it had been dealing with the application. (John *v.* John. P.D. & A.) ... ... ... ... ... 143

8. Separation; maintenance; causing grievous bodily harm; "conviction"; conditional discharge; Offences against the Person Act, 1861, s. 20, s. 43; Summary Jurisdiction (Married Women) Act, 1895, s. 4; Criminal Justice Act, 1948, s. 12 (1).—A husband, charged under s. 20 of the Offences against the Person Act, 1861, with causing grievous bodily harm to his wife, was given by a court of summary jurisdiction a conditional discharge and bound over for 12 months. By s. 12 (1) of the Criminal Justice Act, 1948, that conviction was to be "deemed not to be a conviction for any purpose other than the purposes of . . . subsequent proceedings" under the previous provisions of that Act. The wife applied under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, for separation and maintenance orders on the ground that her husband had been convicted of an aggravated assault on her contrary to s. 43 of the Act of 1861: —*Held*, a conviction under s. 20 of the Act of 1861 of inflicting grievous bodily harm on a woman was a conviction of an aggravated assault under s. 43 of the Act, even though the punishment imposed was one which could be imposed for a common assault, but the wife was not entitled to the order that she sought because, by reason of s. 12 (1) of the Criminal Justice Act, 1948, the conviction did not rank as a conviction for the purposes of s. 4 of the Summary Jurisdiction (Married Women) Act, 1895. (Cassidy *v.* Cassidy. P.D. & A.) 454

I

INJUNCTION

Contravention of statute; relator action for injunction after repeated contraventions; scope of court's discretion in relator action for an injunction; need to show injury to public.—In all relator actions, notwithstanding that the Attorney-General has exercised his discretion in bringing the action and that the defendant has contravened the provisions of a statute, it is the duty of the court to inquire whether the acts done by the defendant in truth injure the public; if it is established that the public has in fact suffered no injury, the court may in the exercise of its discretion refuse to grant an injunction restraining the defendant's acts, though it is only in the most exceptional circumstances that any statutory provision can be contravened without public injury. For some years, on almost every Sunday in the year, the defendants had sold flowers from two stalls which were placed close to railings dividing a footpath from the adjoining cemetery and near to the pedestrian entrance to the cemetery. The footpath was between 15 and 16 *ft.* wide, and the flower stalls projected about 3 *ft.* 6 *in.* from the railings on to the path. Except on Mothering Sunday, few pedestrians used the footpath. In offering flowers for sale in this manner, the defendants did not incommode anyone using the footpath, and such obstruction as they caused was so slight as not to amount to a nuisance. However, prosecutions were instituted against the defendants for two offences under the Manchester Police Regulation Act, 1844, s. 102. The defendants clearly committed these offences every time that they offered flowers for sale outside the cemetery in the above manner and they were duly convicted and fined on many occasions, although the offences were

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trifling, and did not cause the slightest injury to the public. Notwithstanding the convictions and fines, the defendants continued to operate the flower stalls. The Attorney-General, suing on the relation of the local authority, now brought this action for an injunction restraining the defendants from contravening the Act of 1844. There were no other means available to prevent the defendants' continuing their contraventions of the Act of 1844:—*Held*, (i) in determining whether to grant an injunction the court must exercise its discretion independently of the Attorney-General's decision to institute proceedings for that relief; (ii) in the special circumstances of the case the defendants' acts had not caused injury to the public, although they contravened a statute, and the injunction would be refused. (Attorney-General (on the relation of Manchester Corporation) *v.* Harris and Others. Q.B.D.) ... ... ... ... ... ... 393

J

JUSTICES

1. Bias; licensing; application for off-licence by co-operative society; magistrates or spouses with small interests in society by way of shares and loan deposits; no real likelihood of bias; objection on ground of bias to be taken at hearing; no duty of advocate to question magistrates on suspected facts; Licensing Act, 1953, s. 48 (4), (5).—By s. 48 (4) of the Licensing Act, 1953: "No justice shall act for any purpose under this Act in a case that concerns any premises in the profits of which he is interested . . ." By subs. (5): "No act done by any justice disqualified by this section shall be invalid by reason only of that disqualification . . ." The effect of s. 48 (5) is to oust the common law rule laid down in R. *v.* Rand (1866) 30 J.P. 293, and an applicant for *certiorari* on the ground of bias must now prove a real likelihood of bias, whether by reason of pecuniary interest or otherwise. So held by LORD PARKER, C.J., and DONOVAN, J., SALMON, J., dissenting. An objection that a justice is disqualified from sitting should be taken at the hearing; but there is no duty on the part of an advocate, if he merely thinks it possible that grounds of disqualification may exist but has no definite knowledge, to put "fishing" questions to members of the bench in an endeavour to ascertain whether such grounds do exist. (R. *v.* Barnsley Licensing Justices. *Ex parte* Barnsley and District Licensed Victuallers' Association and Others. Q.B.D.) ... ... ... ... ... 365

2. Committal to quarter sessions for sentence; entry in register; date of offence omitted; wrong statute stated; order that entry be quashed; duty of clerk to magistrates to make new entry and transmit to quarter sessions; Magistrates' Courts Act, 1952, s. 29; Magistrates' Courts Rules, 1952 (S.I. 1952, No. 2190), r. 54.—The applicants were charged at a magistrates' court on two informations, the first of which alleged the larceny and the second the receiving of a lorry spare wheel and tyre. The justices dismissed the first information, but convicted on the second, and committed the applicants to quarter sessions for sentence under s. 29 of the Magistrates' Courts Act, 1952. The entry in the register, which under r. 54 of the Magistrates' Courts Rules, 1952, it was the duty of the clerk to the justices to make, was correct in respect of the adjudication on the information for larceny, but on the information for receiving, in column five of form 117 (the appropriate form) which provided for the dates, the word "ditto" was entered, and in column four under "nature of offence" the words entered were "received from some persons

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unknown a Bedford spare lorry wheel complete with tyre " of a certain size " knowing the same to have been stolen ". The minute of adjudication was: " Committed to quarter sessions for sentence in accordance with s. 29 of the Criminal Justice Act, 1948 ". The clerk of the justices sent to the clerk of peace, under r. 20 of the rules of 1952, a copy of both adjudications, the acquittal and the conviction, and the latter contained the aforementioned inaccuracies and omissions. On motion on behalf of the applicants to bring up and quash the record of the conviction on the ground that the record did not comply with r. 54:—*Held*, (i) that, without deciding whether the nature of the offence had been sufficiently fully set out in the register, the entry in the register failed to comply with r. 54 because the date of the offence had not been set out and the wrong statute had been cited, and, therefore, the entry must be quashed and the copy which was sent forward to quarter sessions amounted to a nullity; (ii) that it became the duty of the clerk of the justices, having struck out the original entry, to make a new and proper entry and to forward a copy of that entry to quarter sessions, who would then be in a position to adjudicate, but it was not necessary that there should be any order of *mandamus* directing the clerk to do this, as he could act in pursuance of his statutory duty. (R. *v.* Huntingdon Justices. *Ex parte* Simpkin and Coombes. Q.B.D.) ... ... ... ... 166

3. Plea of guilty by letter; two informations relating to same circumstances; document headed " Statement of Facts " setting out both alleged offences sent to defendant; notice of plea of guilty; reference by defendant to one information only; conviction on both informations; *certiorari*; one conviction quashed; Magistrates' Courts Act, 1957, s. 1 (1).—Two informations arising out of the same circumstances were preferred against the defendant, the first charging her with causing a motor car to stand on a road so as to cause unnecessary obstruction thereof and the second with contravening parking regulations. When the summons was served on the defendant in respect of both informations, it was accompanied by a " Statement of Facts " in which it was stated that, if the applicant wished to plead guilty to the charge of " motor car (*a*) causing unnecessary obstruction and (*b*) waiting in a restricted area " the facts therein set out would be read to the court and would constitute the evidence adduced against her. It was also accompanied by a " Notice of Plea of Guilty " which the defendant could fill up if she chose to plead guilty and in which she could set out any mitigating circumstances. The defendant completed and returned this notice to the court, which then read: " I have read the statement(s) of facts relating to the charge(s) of motor car waiting in a restricted area . . . I plead guilty to the charge(s) . . ." and she then set out mitigating circumstances which could have been common to both informations. She never made any reference to the charge of causing unnecessary obstruction. The magistrates' court treated the defendant's plea as a plea of guilty to both informations and fined her on both informations in her absence. On motion by the defendant for *certiorari* to quash both convictions:—*Held*, (i) that the provisions of of s. 1 (1) of the Act of 1957 must be strictly complied with and that, as the only plea of guilty before the magistrates was in respect of the second information, the conviction on the first information must be quashed; (ii) that the conviction on the second information must stand, as *certiorari* could not lie for want of jurisdiction as the magistrates had jurisdiction to inquire into the allegations raised by the information, nor could it lie on the ground of error of law,

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because there was no such error on the face of the record, and, even if *certiorari* did lie, the court would not, as a matter of discretion, grant it in the circumstances of the present case. (R. *v.* Burnham Justices, *Ex parte* Ansorge. Q.B.D.) ... ... ... ... ... 539

4. Plea of guilty in absence of defendant; written submission by accused to court; submission not read out in open court; conviction invalidated; Magistrates' Courts Act, 1957, s. 1 (2), proviso (*ii*).—The applicant, who was charged with a parking offence, sent to the court a written statement indicating that he desired to plead guilty and urging matters in mitigation. The statement was not read out in open court, but was handed to the magistrates by their clerk:—*Held*, that before magistrates can deal with an accused person in his absence under the Magistrates' Courts Act, 1957, s. 1, the conditions of that statute must be strictly observed, and as one of the conditions prescribed by s. 1 (2) (*ii*) was the reading of the accused's statement in open court, and, as that had not been done in the present case, the magistrates had no jurisdiction to convict or pass sentence and *certiorari* must issue to quash the conviction. (R. *v.* Oldham Justices. *Ex parte* Morrissey. Q.B.D.) ... ... ... ... ... ... 38

5. Quarter sessions; committal with view to borstal sentence; road traffic offences; disqualification imposed in addition to borstal sentence; limitation of powers of quarter sessions; advisability of committal under s. 29 rather than under s. 28 of Magistrates' Courts Act, 1952.—The appellant, who was 17 years of age, was convicted by a magistrates' court on three charges of taking and driving away a vehicle without lawful authority and on two charges of driving while uninsured, and he was committed to quarter sessions for sentence under s. 28 of the Magistrates' Courts Act, 1952, with a view to a sentence of borstal training being passed. Quarter sessions imposed concurrent sentences of borstal training and disqualification for holding or obtaining a driving licence for five years. On appeal by the appellant against sentence:—*Held*, under s. 20 (5) (*a*) of the Criminal Justice Act, 1948, the powers of quarter sessions were alternative and were limited either to imposing a sentence of borstal training or to dealing with the offender in any manner in which the court of summary jurisdiction could have dealt with him; the sentences imposed on each charge were, therefore, invalid as being in excess of jurisdiction, but the Court of Criminal Appeal could vary the sentence by imposing in respect of the first four charges concurrent sentences of borstal training and on the fifth charge a sentence of disqualification for five years, being a sentence which the magistrates' court could lawfully have imposed. *Per curiam*: In a case to which s. 29 of the Magistrates' Courts Act applies, it is preferable to commit an offender for sentence to quarter sessions under s. 29 rather than under s. 28, as the powers of quarter sessions on committal under s. 29 are not so limited as they are under s. 28. (R. *v.* Dangerfield. C.C.A.) ... ... ... ... ... ... 421

L

LAND DRAINAGE

Repairs of drains; maintenance of drains duty of surveyor of highways under inclosure award; failure to keep drains in fit and proper condition; non-feasance; liability of rural district council; Local Government Act, 1929, s. 30 (1), proviso.—By an award made under an Inclosure Act of 1800 two drains running adjacent to and through land belonging to P were maintainable and repairable by

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the surveyor of the parish highways out of a rate levied by him on all occupiers of lands within the parish. The surveyor's duties were subsequently transferred to the highway board for the district in which the drains lay by the Highway Act, 1862, s. 11, and by the Local Government Act, 1894, they were transferred to the rural district council. By the Local Government Act, 1929, s. 30 (1), the county council was made the highway authority for all rural districts in the county, and, as such, had all the functions under the Highway Acts, 1835 to 1885, as were exercisable by rural district councils as successors to highway boards. Rural district councils ceased to be highway authorities. By the proviso to s. 30 (1) of the Act of 1929, "nothing in this section shall affect . . . any functions not being functions with respect to highways exercisable . . . by rural district councils as successors to surveyors of highways or highway boards." It was not disputed that between 1894 and the passing of the Act of 1929 the duty to maintain and repair the drains lay on the rural district council. No work had been done on the drains since 1947, and partly as a result of the non-repair of the drains P's land had from time to time been flooded. In an action by the Attorney-General on the relation of P and by P, the plaintiffs claimed a declaration that either the rural district council or the county council were bound in law to maintain and keep the drains in repair. P also claimed damages against one or other of the councils: —*Held*, (i) the duty to maintain and repair the drains lay on the rural district council, since, although the main part of s. 30 (1) of the Act of 1929 was apt to transfer these duties to the county council, the drains were part of the land drainage scheme, and, therefore, the function of maintaining and repairing them was not a function with respect to highways within the proviso to s. 30 (1), and, accordingly, were not transferred to the county council; (ii) the immunity from liability for non-feasance which applied to highway authorities did not extend to the rural district council who were, therefore, liable to be sued for their failure to maintain and repair the drains; (iii) the Inclosure Act was passed and the award thereunder made for the benefit of the persons in favour of whom the inclosures were made, and, therefore, P was entitled to the declaration and to damages since he was such a person in that his land was immediately adjacent to the drains and the drains passed through his land. (Attorney-General (on the relation of Thomas Brownlee Paisley) and Another *v.* St. Ives Rural District Council and Another. Q.B.D.) 514

LICENSING

1. Exemption from closing; general order; premises in immediate neighbourhood of public market; discontinuance of actual market; meetings of farmers on former market days; business done with commercial travellers; Licensing Act, 1953, s. 106 (1), (2).—Section 106 of the Licensing Act, 1953, provides: "(1) Where on application to justices . . . by the holder of a justices' on-licence for premises situated in the immediate neighbourhood of a public market . . . the justices are satisfied of the matters specified in the next following subsection, the justices may grant him [a general order of exemption] applying to the licensed premises, in addition to the permitted hours fixed . . . (2) Justices shall not grant a general order of exemption unless satisfied, after hearing evidence, that it is desirable to do so for the accommodation of any considerable number of persons attending the public market . . ." A licensee applied for a general exemption order for his licensed premises under s. 106 (1) on Thurs-

LICENSING—*continued* PAGE

days on the ground that the premises were situated in the immediate neighbourhood of a public market held on that day. Up to 22 years ago a cattle market was held in the market place in the town on Thursdays, but since then there was only a fruit stall there on Thursdays, a fish stall every day, and certain occasional stalls. Farmers were in the habit of coming into the town on Thursday, which was still called market day, and going into public houses around the market place to do business with each other and commercial travellers. The justices held that there was a public market in the immediate neighbourhood of the applicant's premises on Thursdays and granted the application. On application by the police for an order of *certiorari* to quash the general exemption order:—*Held*, that a meeting of people in public houses could not constitute a public market, nor could the bar of a public house constitute a market place, and, therefore, there was no evidence on which the justices could find that there was a public market, and *certiorari* must issue. (R. *v.* Bungay Justices. *Ex parte* Long. Q.B.D.) ... ... ... 315

2. Taking intoxicating liquor from licensed premises outside permitted hours; crate of bottles ready to be removed; intervention of police before crate taken outside premises; Licensing Act, 1953, s. 100.—By s. 100 of the Licensing Act, 1953: " . . . no person shall, except during the permitted hours . . . (*b*) . . . take from, any [licensed] premises any intoxicating liquor." No offence is committed under the aforementioned section unless and until the intoxicating liquor is taken outside the licensed premises. (Pender and Others *v.* Smith. Q.B.D.) ... ... ... ... ... ... 351

LOCAL GOVERNMENT

1. Borough councillor; pecuniary interest; disqualification for voting or taking part in discussion; councillor managing director and substantial shareholder in building company; tenders in the past for building council houses; no intention of tendering further; discussion on council's policy with regard to tenders; Local Government Act, 1933, s. 76 (1).—Section 76 (1) of the Local Government Act, 1933, provides: " If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as is practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter . . ." The appellant, who was a borough councillor, was also managing director and a very substantial shareholder in a private building company. The company did not normally build council houses, although prior to 1954 they had done substantial building work for the borough council. In 1956 the appellant was appointed vice-chairman of the council's housing and town planning committee, and he then decided that in future the company should not tender for contracts with the council. The decision was, however, not recorded or notified to the council and could have been changed at any time. In July, 1957, it was proposed at a meeting of the borough council that, when it was required that tenders should be obtained in compliance with standing orders, the borough engineer should submit a tender, and, where necessary, the direct labour force of the council should be increased to implement that policy. At a later meeting an amendment was put forward to delete from the motion the words which enabled the borough engineer

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to increase the direct labour force. The appellant, despite some objections, spoke in favour of the amendment. The appellant was prosecuted at a magistrates' court for an offence under s. 76 (1). The magistrates were of opinion that he was sincere in a statement which he made to them that the company did not intend to tender for any further council work and that he had throughout acted openly and honourably, but held that, none the less, the offence was proved, and convicted him. On appeal by the appellant to the Divisional Court:—*Held*, that the mischief aimed at by the Act was to prevent members of local authorities who had occasion to enter into contracts from being exposed even to the semblance of temptation and to prevent a conflict of interest and duty which might otherwise arise; that the words "any other matter" in s. 76 (1) were not to be construed in a narrow sense; that in the present case the company did have a pecuniary interest in the matter under discussion; and that the interest was not too remote to bring them within the words of the section; and, therefore, that the appeal must be dismissed. Brown *v.* Director of Public Prosecutions (1956) 120 J.P. 303, applied. (Rands *v.* Oldroyd. Q.B.D.) ... ... ... 1

2. Byelaws; noise; prohibition against noisy instruments in street "so as to cause annoyance to inhabitants of the neighbourhood"; ice-cream van with musical box and amplifier; need of evidence of annoyance to particular individuals.—A byelaw of a county council provided that no person should for the purpose of selling any article "use any bell, gong or other noisy instrument in any street or public place so as to cause annoyance to the inhabitants of the neighbourhood . . ." The appellant, who sold ice-cream in the streets from a van on which there was fitted an electrical musical-box with an electric amplifier adjustable by the driver, was charged at a magistrates' court with offences against the byelaw on two different occasions. A number of witnesses were called, but only two, one in respect of each occasion, said that in fact they had been caused annoyance by the use of the musical-box. The justices convicted the appellant. On appeal:—*Held*, that an instrument could be noisy within the meaning of the byelaw whether it was a musical instrument or not; that it was sufficient to prove that it was so noisy as to be calculated to annoy; and that it is not necessary that there should be any evidence that one or more people were in fact annoyed by the instrument on the particular occasion. (Raymond *v.* Cook. Q.B.D.) ... ... 35

3. District auditor; refusal to surcharge; appeal by aggrieved elector to Minister; surcharge on direction from Minister; right of appeal for persons surcharged; right to apply for relief; jurisdiction of High Court; Local Government Act, 1933, s. 228 (1) (*d*), s. 229 (1), (3), s. 230 (1).—By the Local Government Act, 1933, s. 228 (1): "It shall be the duty of the district auditor at every audit held by him . . . (*d*) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred . . ." By s. 229 (1): "Any person who is aggrieved by a decision of a district auditor . . . may, where the disallowance or surcharge or other decision relates to an amount exceeding £500, appeal to the High Court, and may in any other case appeal either to the High Court or to the Minister . . . (3) Where an appeal is made to the Minister under this section, he may at any stage of the proceedings, and shall, if so directed by the High Court, state in the form of a Special Case for the opinion of the court any question of law arising in the course of the appeal, but save as aforesaid the

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decision of the Minister shall be final." By s. 230 (1): "In the case of a surcharge, the person surcharged may, whether or not he appeals under the preceding section, apply to the tribunal (whether the High Court or the Minister) to whom he appeals or, if he does not appeal, to the tribunal (whether the High Court or the Minister) to whom he might have appealed, for a declaration that in relation to the subject-matter of the surcharge he acted reasonably or in the belief that his action was authorized by law, and the court or Minister, if satisfied that there is proper ground for doing so, may make a declaration to that effect." An appeal does not lie to the High Court under s. 229 (1) against a surcharge made by a district auditor acting administratively on instructions of the Minister given pursuant to s. 229 (2), as all the rights of appeal given by s. 229 are rights of appeal from the acts of a district auditor done in the course of his judicial duties. A person so surcharged may, however, apply to the High Court for a declaration and relief under s. 230. (Dean and Another *v.* Ashton-in-Makerfield District Auditor. Q.B.D.)... ... 356

P

PRIVATE STREET WORKS

Objections to proposal by frontagers; no application to court to determine objection; proposal abandoned; power of local authority to pass new resolution and amend estimate; Private Street Works Act, 1892, s. 6, s. 7, s. 8, s. 11.—In September, 1931, a local authority resolved, pursuant to s. 6 of the Private Street Works Act, 1892, to make up a road. Objections on behalf of the majority of the frontagers were lodged, but no application was made to have these determined by a court of summary jurisdiction. In April, 1948, the local authority resolved pursuant to the aforementioned provisions to make up the road and the resolution bore no reference to the previous resolution. Again objections were lodged, but no application was made for their determination. In January, 1952, the local authority resolved, pursuant to s. 11 of the Act, to amend the 1948 estimate of the probable expenses and the provisional apportionment. Objections to this resolution were lodged, and, on application by the local authority, disallowed by the court:—*Held*, that, on the facts, the original resolution of September, 1931, must be regarded as having been abandoned; the abandonment did not prevent the local authority from passing validly a new resolution under s. 6; and, therefore, the resolutions of 1948 and 1952 were valid. (R. & T. Glynn Evans and Others *v.* Liverpool Corporation. Q.B.D.) ... ... ... ... 385

PRIVILEGE

1. Arrest; persons attending court; litigant in person; arrest in court and committal to prison for contempt.—The so-called privilege from arrest which is afforded to persons attending court, including parties, witnesses, barristers and solicitors, is a power which every court has to ensure that justice is done in the court and that persons properly in the court are not interfered with by being prevented from assisting the court and carrying on their business there. Where, however, a litigant in person is arrested in court and committed to prison for contempt of court on the order of the court before which he is appearing, he cannot claim privilege from arrest. (*Re* Hunt. Q.B.D.) 140

2. Police records; production as evidence; objection by Home Secretary; finality.—The plaintiff claimed from the defendants damages for conspiracy to defraud, false imprisonment, and malicious prose-

PRIVILEGE—*continued* PAGE

cution. The third defendant was a detective constable in the Metropolitan police force, and in his affidavit of documents he claimed privilege for reports made by him to his superior officers and communications passing between the Metropolitan police force and other police forces on the ground that their production would not be in the public interest. The Home Secretary objected to the production of those documents on the same ground. The plaintiff asked for an order that those documents should be produced, *inter alia*, on the ground that fraud against a member of the police force had been alleged:—*Held*, (i) the principle that in an action the right to privilege might be lost where fraud was alleged was not applicable to the right of the Crown to withhold documents from discovery; (ii) a decision of a responsible Minister of the Crown as to the non-disclosure of documents which was unimpeachable on its face was final. (Auten *v.* Rayner and Others. C.A.) ... ... ... ... ... ... 122

## PUBLIC HEALTH

Situation of water-closets; breach of byelaws; recovery of price of works. —Work carried out by the plaintiffs, a firm of building contractors, involved on two floors of the defendants' dwelling-house the construction of a bathroom and lavatory in separate rooms. Entry was to be had to each of these rooms from two adjoining bedrooms. Byelaws of the London County Council required that a water-closet should not be "entered from any room used for human habitation . . . provided that a water-closet used exclusively with a bedroom or dressing-room may be entered directly from such room". Breach of the byelaws was punishable by fine under s. 109 of the Public Health (London) Act, 1936. The building work in question infringed the byelaws, but the plaintiffs did not know, until the work was advanced, that that would be the case. The local authority for a time did not insist on compliance with the provision of the byelaws. In an action by the builders for work done the defendants contended that the price for the work in question, could not be recovered because it was illegal by reason of being in breach of the byelaws. The architect, who was brought in as a third party, submitted that the byelaws were invalid as being unreasonable, unjust and uncertain:—*Held*, (i) the byelaws were not to be treated as invalid on the ground of unreasonableness, injustice, or obscurity in their language, and the Court would be all the slower to hold byelaws invalid in proceedings to which the local authority concerned were not parties; (ii) there was no fundamental illegality pervading the whole of the contract or the work done, and, therefore, the plaintiffs were entitled to recover. (Townsends (Builders) Ltd. *v.* Cinema and Property Management, Ltd. (David A. Wilkie and Partners, *Third Party*). C.A.) ... ... ... ... ... ... ... ... ... 115

R

## RATING AND VALUATION

1. Advertising station; right to fix and exhibit advertising sign to be erected by the grantee; Local Government Act, 1948, s. 56.—By an agreement made on June 21, 1955, a local authority granted to the ratepayers for three years the exclusive rights of fixing and exhibiting on premises of the authority "a flashing neon advertising sign reading 'Players, please' to be erected in [a specified position] and to be operated by an automatic time switch", together with the right to connect the sign to the electricity supply and "to erect and maintain a permanent scaffold and iron ladder". The ratepayers were given

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the right to enter on the premises to make the necessary fixtures and do other things for making the sign effective and to repair and maintain the apparatus, and they undertook to keep and maintain the sign securely fixed and in good and substantial repair. They remained the owners of the sign and apparatus and were to remove them on the determination of the agreement. By a proposal for the alteration of the valuation list made on April 12, 1956, the valuation officer proposed to assess the right at £165 rateable value under s. 56 of the Local Government Act, 1948, on the basis that at that date the right enjoyed was the right to use the authority's premises and the neon sign and frame by then erected under the agreement. The Lands Tribunal held that the assessment should be £150 rateable value on the basis that the right conferred on the ratepayers was the right to use the premises and a sign to be erected, but not then erected. On appeal, it was conceded that the neon sign and frame erected were a structure within the meaning of s. 56 of the Act of 1948:—*Held*, the right which was deemed by s. 56 of the Local Government Act, 1948, to be a separate hereditament for rating purposes must be ascertained according to the true construction of the agreement of June 26, 1955; the right thereunder was to use the whole structure that had been erected by April 12, 1956 (which was the relevant date at which to determine what the right was); and, therefore, the rateable value of the hereditament was £165. (Imperial Tobacco Co. (of Great Britain and Ireland), Ltd. *v.* Pierson (Valuation Officer). C.A.) ... ... ... ... ... ... ... 505

2. Application by rating authority for distress warrant; claim by occupiers for relief under s. 8 of Rating and Valuation (Miscellaneous Provisions) Act, 1955, refused; no appeal to quarter sessions; facts not substantially in dispute; no right of magistrates to decline jurisdiction; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*c*), (2).—Where a rating authority apply to a magistrates' court for a distress warrant in respect of unpaid rates, the magistrates have jurisdiction, at any rate in a case where the facts are not substantially in dispute, to determine whether the defendant ought to have been rated at all, or, if so, whether for the full rateable value or for a lesser amount having regard to some provision in relief. The only possible exception to this rule, which is an exception based on convenience, is where the facts are not agreed and are complicated. General rates were levied by a rating authority on premises occupied by a bowling club. The club applied to the rating authority for partial relief under s. 8 (1) (*c*), (2), of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, but the application was refused, and the club did not appeal to quarter sessions. They paid the amount of rates which would be due if they were entitled to the relief claimed, and the rating authority applied to a magistrates' court for the balance due. The magistrates decided that they had no jurisdiction to determine the claim to limitation of rates:—*Held*, that, as the facts were simple and not in dispute, the magistrates had jurisdiction to determine the claim, and that the case must be remitted to them with a direction to do so. (Evans *v.* Brook. Q.B.D.) ... ... ... ... ... 347

3. De-rating; industrial hereditament; adapting for sale; sorting, grading and matching of skins; Rating and Valuation (Apportionment) Act, 1928, s. 3 (1), (2); Factory and Workshop Act, 1901, s. 149 (1). —A hereditament was occupied and used by a company for the sorting, grading and matching of furs and for their arrangement in matched lots of skins of uniform grade for sale at the company's fur

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auctions. The skins were received from different trappers and breeders at the hereditament. They arrived in bales of unmatched, unsorted and ungraded skins, which in that state would command a very poor price if they were saleable at all. The contents were checked with the invoices and each skin was marked so as to be identified as the property of the owner of that parcel and it remained so identified until made into lots or sold. All the skins were mixed together regardless of ownership and were subjected to a highly skilled process of sorting, grading and matching. They were ultimately made up into lots of matched and graded skins of uniform quality, which included skins from several different trappers or breeders. The lots were sold at the company's periodical fur auctions at prices computed at so much per skin. Each lot was sold, however, for an aggregate lump sum and the owner of a skin or skins in each lot received a proportion of the aggregate price appropriate to the number of his skins in that lot, less commission, all skins in a lot being assumed to be of equal value. This method of selling skins in graded lots produced far better prices than sales of skins by owners individually:—*Held*, the process carried on at the hereditament was a dealing with collections or agglomerations of single things (the unit formed by agglomeration being each bale of skins which arrived at the hereditament), and the single skin within a bale was not the unit to be regarded for the purposes of de-rating; thus there was an "adapting for sale" (of the bales of skins) within the meaning of the definition of "workshop" in the Factory and Workshop Act, 1901, s. 149 (1), and the hereditament was an industrial hereditament within s. 3 (1) (2) of the Rating and Valuation (Apportionment) Act, 1928, and entitled to de-rating accordingly. (Hudson's Bay Co. *v.* Thompson (Valuation Officer). H.L.) ... ... ... ... ... 479

4. Lands Tribunal; appeal from decision of local valuation court; onus of proof; Tribunal to be satisfied of something wrong in findings below; assessment; dwelling-house; method of valuation; purchase price; Valuation for Rating Act, 1953, s. 2 (2).—When considering an appeal against a decision of a local valuation court, the Lands Tribunal is entitled to say that it will not reverse the decision below unless it is satisfied that there is something wrong as a matter of fact in its findings. The onus of proof is on the appellant. The purchase price of a dwelling-house is not the guide, or a particularly safe guide, in arriving at its gross value as defined in s. 2 (2) of the Valuation for Rating Act, 1953. (Sole *v.* Henning (Valuation Officer). C.A.) ... ... ... ... ... ... ... ... ... 511

5. Limitation of rates chargeable; full amount of rates without claiming relief paid in first year of new valuation list; right of ratepayer to claim relief in subsequent years; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (2).—A society registered under the Friendly Societies Acts occupied hereditaments which included a hospital, equipped to treat nearly every type of surgical and medical case, a nurses' home, and an optical clinic. The objects of the society, as set out in its rules, were to provide, by members' voluntary contributions, for "the relief of members in sickness or infirmity". These objects were carried out by providing at the society's hospital and other medical units free orthopaedic, surgical, medical, dental and optical treatment. The rules provided that membership of the society was to be unlimited in numbers and that every member should have an equal voice in the concerns of the society. Membership was open to all who were engaged in industry or commerce (industrial mem-

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bers) including their wives and children over 15, and also to founder members (subscribers of not less than 100 guineas), life members (subscribers of not less than 25 guineas) and annual members (annual subscribers of not less than £1 1*s*.). Industrial members were required to pay a minimum contribution of 3*d*. a week except those who had contributed for not less than 10 years and at 65, on retiring from work, were unemployed, who paid 1*d*. a week. Anyone 26 weeks in arrears with contributions ceased to be a member. The society had a membership of 400,000 all of whom, except about 2,000, were industrial members. Patients at the hospital were all members of the society apart from a few persons accepted as emergency cases. The society was not established or conducted for profit. In August, 1956, the plaintiffs, the trustees of the society, applied for relief from rates charged on the society for the year ending March 31, 1957, under the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8. The rating authority refused to grant relief, and the plaintiffs appealed to quarter sessions, but their notice of appeal was out of time and they withdrew it. Subsequently, the plaintiffs paid the full amount of rates for the year ending in March, 1957. They now sought a declaration that the society was an organization within s. 8 (1) (*a*) of the Act of 1955, *viz*., an organization " whose main objects are charitable or are otherwise concerned with the advancement of . . . social welfare ", and, therefore, entitled to relief from rates under s. 8 (2). The rating authority contended that the court had no jurisdiction to grant the declaration:—*Held*, (i) the court had jurisdiction to grant the declaration, which, if granted, would be effective to entitle the society to obtain relief for the years following that ending in March, 1957, since, on the true construction of s. 8 (2) of the Act of 1955, " the amount of rates chargeable for the first year " meant the amount of rates for which the ratepayer would have been liable after any relief to which he was entitled, and the fact that there had been an overpayment in the first year was irrelevant in considering the ratepayer's right to relief in the following years; (ii) the society was not an organization within s. 8 (1) of the Act of 1955, because its main object was to do good to itself, that is, to the members of the society themselves, and such a purpose was not charitable, since it lacked the element of public benefit (*dictum* of LORD SIMONDS in Oppenheim *v*. Tobacco Securities Trust Co., Ltd. [1951] 1 All E.R. at p. 34, applied), nor was it " otherwise concerned with the advancement of . . . social welfare ", since it lacked the requisite element of altruism (National Deposit Friendly Society (Trustees) *v*. Skegness U.D.C. (1958) 122 J.P. 399, and Independent Order of Odd Fellows Manchester Unity Friendly Society *v*. Manchester Corporation (1958) 122 J.P. 1, followed; *dictum* of VISCOUNT SIMONDS in Skegness U.D.C. *v*. Derbyshire Miners' Welfare Committee (1959) 123 J.P. 338, considered). (Waterson and Others *v*. Hendon Borough Council. Q.B.D.) ... 423

6. Local valuation court; appeal; *res judicata*; scientific society's claim for exemption; claim upheld on appeal relating to previous valuation list; decision not appealed; circumstances admitted to be unchanged.—In 1951 a hereditament occupied by a society was held by a local valuation court to be exempt from rating under the Scientific Societies Act, 1843, and there was no appeal by the valuation officer against that decision. In the quinquennial valuation list which came into force in 1956 the hereditament was assessed as a rateable hereditament. On an appeal to the local valuation court arising out of a proposal by the society for the alteration of the list by

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showing the hereditament as exempt from rating the valuation officer did not contend that the society's activities had changed since 1951:—*Held*, (SELLERS, L.J., dissenting): the decision in 1951 related only to the valuation list existing at that time, for the court had then jurisdiction over that list only and not over future lists, and, therefore, there was no *res judicata* which could give rise to the valuation officer being estopped from contesting the appeal as to the rateability of the hereditament in relation to the list of 1956. (Society of Medical Officers of Health *v.* Hope (Valuation Officer). C.A.) ... 221

7. Plant and machinery; underground petrol tank at petrol station; Plant and Machinery (Valuation for Rating) Order, 1927 (S.R. & O. 1927, No. 480), sch. class 4; Rating and Valuation Act, 1925, s. 24 (1).—At a petrol filling station for motor vehicles there were installed underground four tanks, each of 3,000 *galls.* capacity, to be used for the storage of petrol. Each tank was constructed of metal and was cylindrical in shape, and was delivered to the site as a complete unit, 13 *ft.* 6 *in.* in length and 7 *ft.* in diameter, and weighing when empty about 2 *tons.* Each was installed in a pit measuring internally 8 *ft.* 6 *in.* by 15 *ft.* by 9 *ft.*, the floor of which was covered by a concrete slab, 9 *in.* thick. The walls of the pit were of brick, 9 *in.* thick, and the pit was covered with a concrete slab 6½ *in.* thick which formed an extension of the forecourt to the filling station. There was access to the pit by a manhole supported on rolled steel joists. Each tank rested by its own weight on three concrete cradles, 12 *in.* in height, on the floor of the pit, and the space around the outside of the cylinder and between it and the walls of the pit was filled with sand. A tank could only be removed from its pit by demolishing the concrete covering. Under s. 24 (1) of the Rating and Valuation Act, 1925, and class 4 of the schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, no account was to be taken, when valuing a hereditament for rating, of tanks in or on the hereditament, save when a tank was, or was in the nature of, a building or structure. It was admitted that each tank in the present case, when considered by itself, was not a building or structure or in the nature of a building or structure, but it was agreed that each of the pits or chambers in which the tanks were was itself a building or structure:—*Held*, (LORD KEITH OF AVONHOLM and LORD DENNING, dissenting): the tanks did not fall to be rated as part of the hereditament because, although the cylinders were "tanks" within class 4 of the schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, they were not themselves, nor were they in the nature of, buildings or structures, and the placing of the cylinders in their compartments did not change them into, or into the nature of, buildings or structures within class 4 as each being part of a unit comprising a pit and the tank within it. Decision of the COURT OF APPEAL (1958) 122 J.P. 129, reversed. (Shell-Mex and B.P., Ltd. *v.* Holyoak (Valuation Officer). H. of L.) ... ... ... ... 181

8. Relief; charitable organization; "conducted for profit"; trust for provision of workmen's dwellings; rents to be such as to increase the fund; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—A trust fund was made applicable to "the amelioration of the condition of the poorer classes of the working population of London and of their modes and manner of living, by the provision of improved dwellings" and in other ways. The trust deed provided, *inter alia*, "that the original capital of the fund should, by expenditure on objects of a permanent character returning a fair low rate of

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interest, be kept intact and go on increasing". The trustees, accordingly, invested the fund in dwellings which they let to poor working people at rents calculated, so far as the Rent Acts would allow, to realize a net income, after allowing for all outgoings, of three *per cent.* on the capital. This income was applied in acquiring additional properties and expanding the work of the trust, and was not, and could not, be distributed:—*Held*, the words "not established or conducted for profit" in s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, meant not established or conducted for the purpose of making profit or with the object of making a profit, and did not extend to every organization which in any circumstances or at any stage in its activities received something which might be considered in itself to constitute a profit; the present trust was established for the purpose of ameliorating the condition of the poorer classes, and its object was, therefore, charitable; the making of the profit was merely part of the machinery by which the trust achieved charitable purposes; and, therefore, the trust was not established or conducted for profit and was entitled to rating relief under s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955. Decision of Divisional Court (1958) 122 J.P. 317, reversed. (Guinness Trust (London Fund) *v.* West Ham Corporation. C.A.) ... ... ... ... ... ... ... ... ... 331

9. Relief; organization concerned with advancement of education; zoological society incorporated as company limited by guarantee; main objects charitable; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*), (2).—The society was incorporated as a company limited by guarantee and the memorandum of association, by cl. 3, stated that: "The objects of the society are: (*a*) To . . . take over as a going concern and conduct as a scientific and educational undertaking the business [formerly carried on by another company] . . . (*b*) To promote, facilitate and encourage the study of biology, zoology and animal physiology, aviculture, aquaria, ichthyology, entomology, botany and horticulture and all kindred sciences and to foster and develop among the people an interest in and knowledge of animal life. (*c*) To establish, equip and carry on, and develop zoological parks or gardens and living zoological collections at such places as the society shall determine. (*d*) To establish sanctuaries for all kinds of wild life, particularly animal and bird sanctuaries and to police in such manner and do all things necessary for the protection of all animal and plant life therein." Thereafter followed some 22 paragraphs, relating to various activities, set out without any distinction between main objects and ancillary objects. These provided for the holding of public meetings, publishing books, investing money, engaging orchestras, building and equipping restaurants and other buildings for the convenience of visitors, raising funds, and other matters. The society owned and managed zoological gardens of about 145 acres containing about 750 animals, birds and reptiles. Visitors, of whom there were over 500,000 annually, were charged admission fees, and about 130,000 meals, in addition to minor refreshments, were served annually to visitors, but the principal source of income was derived from admission fees. The society claimed, in respect of the premises it occupied, limitation of rates under the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*), (2). The court found that the society was not established or conducted for profit:—*Held*, the main objects of the society were to be found in para. (*a*), para. (*b*), para. (*c*) and possibly para. (*d*) of cl. 3, the remaining paragraphs containing powers and not objects

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properly so called; the main objects were charitable, or, if not charitable, were concerned with the advancement of education; and, therefore, the society was entitled to limitation of rates under s. 8 (1) (*a*), (2), of the Act of 1955. (North of England Zoological Society *v.* Chester Rural District Council. Ch.D.)... ... ... ... ... 47

10. Relief; organization concerned with advancement of education; zoological society incorporated as company limited by guarantee; main objects charitable; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*), (2).—A society was incorporated as a limited company by guarantee and the memorandum of association stated by cl. 3: "The objects of the society are: (*a*) To . . . take over as a going concern and conduct as a scientific and educational undertaking the business [of carrying on zoological gardens]. (*b*) To promote, facilitate and encourage the study of biology, zoology and animal physiology . . . and all kindred sciences and to foster and develop among the people an interest in and knowledge of animal life. (*c*) To establish, equip and carry on, and develop zoological parks or gardens and living zoological collections at such places as the society shall determine." Thereafter followed some 22 paragraphs, relating to various activities, set out without any distinction between main objects and ancillary objects. These provided for the holding of public meetings, publishing books, investing money, engaging orchestras, building and equipping restaurants and other buildings for the convenience of visitors, raising funds, and other matters. By cl. 4 of the memorandum payment of dividends to members of the society was prohibited, and by cl. 9 on the dissolution of the society its assets were not to be distributed among the members. The society owned and managed zoological gardens of some 145 acres containing about 750 animals and reptiles. During recent years the society's income, which was mainly derived from admission fees to the gardens, had appreciably exceeded its expenditure. The surplus income was used in improving the equipment and raising the standards of the zoological gardens:—*Held*, (i) looking at the history and operations of the society, it was an organization not established or conducted for profit; (ii) the main objects of the society were to be found in para. (*a*), para. (*b*), and para. (*c*) of cl. 3 of its memorandum, the remaining paragraphs containing powers or ancillary objects; the main objects were charitable, or, if not charitable, were at least otherwise concerned with the advancement of education; and, therefore, the society was entitled to limitation of rates under s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955. Decision of VAISEY, J. (1958) *ante*, p. 47, affirmed. (North of England Zoological Society *v.* Chester Rural District Council. C.A.) ... ... ... ... ... ... ... 469

11. Relief; "organization concerned with advancement of social welfare"; General Nursing Council for England and Wales; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The General Nursing Council for England and Wales, originally formed under the repealed Nurses Registration Act, 1919, existed under and for the objects declared in the Nurses Act, 1957. The functions of the council included the maintenance of a register of nurses, together with a roll of assistant nurses; the regulation of the conditions of admission to and removal from the register and the roll, and, in connexion therewith, the exercising of supervisory and directing powers in regard to training and examination; and the exercising of other ancillary powers. The Act of 1957 also pro-

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vided penalties for the false assumption of the title of registered or enrolled nurse, and imposed restrictions on the use of the titles of nurse or assistant nurse:—*Held*, the council was not an organization whose main objects were "concerned with the advancement of . . . social welfare" within s. 8 (1) (*a*) of the Act of 1955, because (i) the main object of the council, *viz.*, to regulate the profession of nursing in the manner and to the extent set out in the Nurses Act, 1957, was not charitable; and (ii) (LORD COHEN and LORD SOMERVELL OF HARROW dissenting) public benefit was not the test of social welfare, though social welfare might be public benefit, and, however wide a meaning was given to "social welfare" or to "the advancement of social welfare", the objects and functions of the council were not concerned with either. Decision of the Court of Appeal (1957) 122 J.P. 67 affirmed. (General Nursing Council for England and Wales *v.* St. Marylebone Corporation. H.L.) ... ... 169

12. Relief; organization concerned with advancement of social welfare; holiday camp for miners, their dependants and invitees; compulsory contributions levied under statute; element of benevolence; class sufficiently large; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The ratepayers were the trustees of a holiday camp and ancillary premises which they occupied for the purpose of providing "a holiday centre and a recreation or pleasure ground for the benefit of workers in or about coal mines employed by collieries in the Derbyshire district", including the workers' dependants and guests. The holiday camp was established under a fund raised by compulsory contributions levied under statute. The ratepayers were responsible for the expenses of maintaining and operating the camp, but received grants to cover capital expenditure from a social welfare organization set up under statute. The ratepayers paid less than a rackrent for the premises, and they neither sought to nor did make a profit or loss on their operations. On the question whether the ratepayers were an organization whose main objects were "concerned with the advancement of . . . social welfare" within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, so as to be entitled to limitation of rates under s. 8 (2) of that Act:—*Held*, the ratepayers were an organization concerned with the advancement of social welfare within s. 8 (1) (*a*) of the Act of 1955, because (i) there was an element of benevolence about the camp even though it was provided and maintained by a statutory levy or by contributions from a statutory body so far as it was not maintained by those who made use of it, the crucial test being the purpose for which the money was devoted and not the source from which it was derived, and (ii) the camp was concerned with the advancement of social welfare, the class in the community for which it provided a benefit being large enough to come within s. 8 (1) (*a*) of the Act of 1955. (Skegness Urban District Council *v.* Derbyshire Miners' Welfare Committee. H.L.) ... ... ... 338

13. Relief; organization not established or conducted for profit; organization whose main objects . . . "are . . . connected with the advancement of . . . social welfare"; central organization formed to encourage working men to form clubs; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—In 1862 the appellant union was formed to encourage working men to band together in working men's clubs. By 1888 the union was very nearly self-supporting, and on April 18, 1889, it was registered under the Industrial and Provident Societies Act, 1876. By 1889 the

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number of clubs which were members of the union was 384; by 1925 2,469, and by 1955 3,420, with a total membership of just under two millions. By r. 2 of its rules the objects of the union were stated to be: "To carry on the business of general advisers, teachers of the doctrine of association for social or ameliorate purposes, publishers, stationers and booksellers, general traders, agents and manufacturers, both wholesale and retail, of any article which may assist the development of clubs or their members; to provide and maintain convalescent homes, or other institutions for the benefit of the members or wives or children or dependants of the members of clubs which are members of the union. The union shall have full power to do all things necessary, expedient, or considered by it desirable for the welfare and protection or assistance of, or helpful in any manner to, its members, and for the accomplishment of all objects specified in its rules." The appellants appealed to quarter sessions against the amount of rates assessed to be paid in respect of a convalescent home maintained by it, contending that it was entitled to relief under s. 8 (1) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, as "an organization . . . not established or conducted for profit and whose main objects are . . . concerned with the advancement of . . . social welfare." The deputy recorder held that the appellants were an organization which was not established or conducted for profit, but that their main objects were not concerned with the advancement of social welfare, and they were, therefore, not entitled to the relief claimed. The appellants appealed: *Held*, (i) that, as the profits made by the appellants were not distributed like those of a commercial company nor returned to the members, the deputy recorder had rightly held that the organization was not established or conducted for profit; (ii) (CASSELS, J., dissenting on this point) that, though the member clubs could not qualify for relief, as there was not in their case the public element necessary to constitute "social welfare" the original object of the appellants as the central organization, namely, that of encouraging working men to form working men's clubs, had persisted throughout and did fall within the words "advancement of social welfare". The appellants were, accordingly, within the words of s. 8 (1) (*a*) and the appeal must be allowed. (Working Men's Club and Institute Union, Ltd. *v.* Swansea Corporation. Q.B.D.)... ... ... ... 25

RENT CONTROL

Furnished house; excess rent; right to recover; rent of previous tenancy fixed and registered; subsequent letting at rent exceeding registered rent; Furnished Houses (Rent Control) Act, 1946, s. 4 (1) (*a*), (2). —Premises consisting of two furnished rooms were let by the landlord to a tenant at £2 per week. On the application of the tenant the rent tribunal fixed the rent at £1 per week, which rent was entered in the register kept by the local authority. In July, 1956, the landlord let the premises to another tenant at a rent of £3 per week. The entry in the register remained unchanged, and the present tenant claimed the return of the over-payment of rent of £2 per week:—*Held*, once a rent had been entered in the register for any premises, that was, unless it were changed, the rent payable, and any excess of the registered rent was recoverable by any subsequent tenant. (De Jean and Another *v.* Fletcher. C.A.) ... ... ... ... ... 244

ROAD TRAFFIC

1. Careless driving; sentence; fine and disqualification; disqualification beyond maximum period; appeal; power of Court to quash order of

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disqualification only.—Where a defendant has been convicted of careless driving and both fined and disqualified for holding a driving licence, the disqualification is severable from the conviction and fine. Where, therefore, excessive disqualification has been imposed, the Divisional Court has power, on *certiorari* to quash the disqualification without quashing the conviction and fine. R. *v.* Willesden JJ., *ex parte* Utley (1947) 112 J.P. 97, distinguished. (R. *v.* Arundel Justices. *Ex parte* Jackson. Q.B.D.) ... ... ... ... ... 346

2. Driving on road when unlicensed and uninsured; "road"; car park; Road Traffic Act, 1930, s. 4 (1), s. 35 (1), s. 121.—The respondent, who did not hold a driving licence and was not covered by third-party insurance, drove, with the owner's permission, a motor car which was parked in a car park for some 10 *yards* during which the car passed through a hedge and came to rest on an adjoining lawn. The car park fronted the London Road, Coalville and entrances to it were, from the south side, the pavement of London Road. At the north-west corner of the car park there was an opening of about 15 *ft.* abutting a private footpath which led to the grounds of a bowling club and to allotment gardens. The footpath was habitually used by members of the club and by the allotment holders, who had to cross the car park to get to it but was not habitually used by the general public. The car park was owned and maintained by the local authority, and all members of the public were permitted to use it at all times for parking cars without payment. Informations under s. 4 (1) and s. 35 (1) of the Road Traffic Act, 1930, were preferred at a magistrates' court against the respondent for driving a motor vehicle on a road without a licence and for using a motor vehicle on a road while uninsured. Section 121 of the Act defines "road" as "any highway and any other road to which the public has access." The justices held that the car park was not a road, either in itself or as part of the private footpath, and dismissed the informations. On appeal by the prosecutor:—*Held*, that, viewed as part of the private property, the car park was not a "road" within the meaning of s. 121, because the public had not access thereto; and, viewed as itself, there was evidence to support the justices' finding that it was not a road, and the appeal, therefore, must be dismissed. (Griffin *v.* Squires. Q.B.D.) ... ... ... ... ... ... 40

3. Failing to stop and give name and address after accident; name and address given after failure to stop; Road Traffic Act,1930, s. 22 (1).—Section 22 (1) of the Road Traffic Act, 1930, creates one offence only. If either requirement remains unsatisfied by the driver of a vehicle which has been involved in an accident of the kind therein described, that is to say, if he does stop but fails to give his name and address, or if he fails to stop, but later gives his name and address, the full requirements of the subsection are not complied with and an offence is committed. (North *v.* Gerrish. Q.B.D.) ... ... ... ... 313

4. Hospital; right to recover expenses incurred by hospital in treating person injured in accident; insurance against third-party risks, covering voluntary passengers; insurers not aware of hospital treatment at time of making payment to person injured; Road Traffic Act, 1930, s. 36 (2), as substituted by Road and Rail Traffic Act, 1933, s. 33.—While G was travelling as a voluntary passenger in a car, he was injured in a motor accident. He received treatment at a hospital. The owner-driver of the car was insured against third-party risks by a policy issued by the defendants, the insurers, which

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not only complied with the requirements of the Road Traffic Act, 1930, s. 36 (1), in relation to such policies, but also extended to cover liability to voluntary passengers. The insurers made a payment under the policy to G. At that time they did not know that G had received hospital treatment. The appropriate hospital authority sued the insurers for the expenses of treating G, claiming under s. 36 (2) of the Act of 1930, whereby they would be entitled to the expenses if the payment that the insurers had made to G was a payment " in consequence of a policy issued under [part 2 of the Act of 1930] in respect of . . . bodily injury to any person " and if G had " to the knowledge of " the insurers received treatment at a hospital. At the date of the issue of the writ the insurers knew that G had received such treatment:—*Held*, (i) the insurers' knowledge required to satisfy the Road Traffic Act, 1930, s. 36 (2), was knowledge existing at the time when payment was made by the insurers to the person injured; therefore, since the insurers had no such knowledge at the time when they paid G, the hospital authority was not entitled to recover the expenses of G's treatment from them; (ii) the fact that the cover afforded by the policy extended to voluntary passengers, and, therefore, beyond what was required by s. 36 (1) of the Act of 1930, did not make it any the less a policy " issued under " part 2 of the Act of 1930 within s. 36 (2); (iii) the words " any person " in s. 36 (2) of the Act of 1930 covered voluntary passengers and were not confined to persons compulsorily insured. (Barnet Group Hospital Management Committee *v.* Eagle Star Insurance Co., Ltd. Q.B.D.) ... ... ... ... ... ... 521

5. Metropolis; hackney carriage; plying for hire; cars of private hire company at airport; vehicles not exhibited as available for hire; Metropolitan Public Carriage Act, 1869, s. 7.—A hackney or stage carriage does not ply for hire within the meaning of the Metropolitan Carriage Act, 1869, unless it is exhibited to the public as being available for hire. A car hire service had two offices, one in the Central Terminal and one in the North Terminal of London Airport. There were extensive advertisements of the facilities available at desks in both offices and also in other parts of the airport. In order to hire a car a member of the public went to a desk in one of the offices and asked to be driven to a particular destination. He was escorted from the office to one of two standing places and shown into a particular car. At his destination he paid the fare which was based on the distance travelled in accordance with a scale of charges exhibited in both offices. In the Central Terminal the standing place was in a roadway to which the public had no access; in the North Terminal it was in a roadway to which the public had access, but there was nothing which indicated that the cars were for hire and the cars had the appearance of ordinary private cars accompanied by private chauffeurs. The service also had parking places in the airport from which the standings were replenished:—*Held*, that the cars were not exhibited as being available for hire, and, therefore, were not plying for hire within the meaning of the Act. (Cogley *v.* Sherwood; Car Hire Group (Skyport), Ltd. *v.* Sherwood; Howe *v.* Kavanaugh; Car Hire Group (Skyport, Ltd.) *v.* Kavanaugh. Q.B.D.) ... ... ... ... ... ... ... ... ... 377

6. Motor vehicle; overall width 9 *ft.* 6 *in.*; three persons not in attendance; steel cylinder mounted on bogies; bogies attached at front to one tractor and at back to another; whether combination one vehicle; Motor Vehicles (Authorization of Special Types) General

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Order, 1955 (S.I. 1955, No. 1038), reg. 18 (1).—The respondents were charged on two informations, each alleging the use of a motor vehicle the overall width of which with its load exceeded 9 *ft.* 6 *in.* without at least three persons being in attendance while it was being driven, contrary to reg. 18 of the Motor Vehicles (Authorization and Special Types) General Order, 1955. A large steel cylinder which was over 9 *ft.* 6 *in.* in diameter was moved by the respondents by means of two tractors. The cylinder itself was mounted at each end on bogies, the bogies in turn being attached at the forward end to one tractor and at the rear end to another tractor. By that means one tractor would pull the bogies and the cylinder, while the tractor at the back would merely guide it round corners. The magistrate held that this combination of vehicles was, in effect, one vehicle within the regulation, and that, since there were two drivers and two attendants, the respondents were guilty of no offence under reg. 18. He, accordingly, dismissed the information. On appeal by the prosecutor:—*Held*, that the word "vehicle" in reg. 18 did not include a combination of vehicles, nor did the singular "vehicle" include the plural, and, therefore, the case must be remitted to the magistrate to hear and determine with the direction that his construction of the regulation was wrong. (Dixon *v.* B.R.S. (Pickfords), Ltd. Q.B.D.) ... ... 207

7. Negligence; police motor cyclist travelling at 60 *m.p.h.* in pursuance of police duties; speed limit 40 *m.p.h.*; liability of police motor cyclist; Road Traffic Act, 1934, s. 3.—The plaintiff while crossing a highway, was knocked down and injured by a motor cycle driven by A, a police constable, who was killed. The accident occurred 20 *mins.* after lighting-up time. At the time of the accident, A was riding at a speed of some 60 *m.p.h.* in pursuance of police duties. The speed limit was 40 *m.p.h.* Section 3 of the Road Traffic Act, 1934, provides, so far as relevant, that the speed limit on motor vehicles should not apply to any vehicle when used for police purposes:—*Held*, A's civil liability for negligence was not affected by s. 3 of the Road Traffic Act, 1934, and in driving at such speed on a restricted road in the half-light he was guilty of negligence. *Per curiam*: the exempting provision of s. 3 does not qualify police drivers' criminal liability for dangerous driving or, indeed, driving without due care and attention. (Gaynor *v.* Allen. Q.B.D.) ... ... ... 413

8. Notice of intended prosecution; place of offence not sufficiently specified; four-mile stretch of minor road; Road Traffic Act, 1930, s. 21.—A notice of intended prosecution under s. 21 of the Road Traffic Act, 1930, stated that the police were considering prosecuting the defendant for dangerous driving, among other offences, "at 7.40 *p.m.* on July 6, 1958, at Hothfield to Bethersden Road. It is alleged that while motor car No. MKJ 680 was being driven along the Hothfield to Bethersden Road in the direction of Hothfield the driver drove in such a manner that he narrowly avoided colliding with a motor car which was stationary on the offside of the road". The Hothfield to Bethersden Road was a minor road approximately four *miles* in length. The justices held that the notice was invalid in that it did not sufficiently specify where the offence was alleged to have been committed and dismissed the information. On appeal by the prosecutor:—*Held*, that the police could have specified the place of the alleged offence more accurately and that it was impossible to say that there were no facts on which the justices could come to the conclusion to which they came, and, therefore, the appeal must be dismissed. (Young *v.* Day. Q.B.D.) ... ... ... ... 317

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9. Unlawfully taking and driving away motor vehicle; using uninsured motor vehicle; four persons in car in early morning; car six *miles* from point where taken with lights on; defendant sitting in rear seat; no explanation at time by defendant of presence in car; case for defendant to answer; Road Traffic Act, 1930, s. 28, s. 35.—The defendant was convicted at a magistrates' court of unlawfully taking and driving away a motor vehicle and of using the vehicle when uninsured. He appealed against both convictions to quarter sessions, and the following facts were found by the recorder. Between 7.30 in the evening of August 29, 1958, and 8.30 next morning a Ford Consul motor car was taken and driven away without authority. It was left by the owner locked with no ignition key and with petrol in it sufficient only for a journey of six *miles*. On August 30 the car was found stranded about six *miles* from the point where it had been taken with four men, including the defendant in it. The appellant was lolling in the back seat with his feet outstretched and his head back. No ignition key was there, but the lights were on. When the appellant was told that he was going to be arrested, he made no reply. At the police station the appellant said to a police officer: "A bloke stopped and asked me if I wanted a lift, so I got in." At the close of the case for the prosecution the recorder was of opinion that no *prima facie* case had been made out that the appellant was acting in concert with the driver or other persons in the car and dismissed both informations against the defendant. On appeal by the prosecutor:—*Held*, that on the facts there was a *prima facie* case of association between the defendant and the driver of the car, and that the case must be remitted to the recorder to hear and determine. (Ross *v.* Rivenall. Q.B.D.)... ... 352

S

SHOPS

1. Early closing; mixed shop; trade of many classes; closing order made by local authority for different days for different trades; applicability of order to mixed shop; Shops Act, 1950, s. 1 (2). The appellants were the occupiers of a mixed shop in which several retail businesses were carried on, the main businesses being those of grocers, greengrocers, fishmongers and butchers. They closed their premises at 1 *p.m.* on Thursdays for the weekly half holiday. The local authority had made orders under s. 1 (2) of the Shops Act, 1950, providing that Wednesday should be early closing day for grocers, greengrocers, fishmongers and butchers, but had made other orders appointing Thursday as early closing day for other businesses which the appellants also carried on on the premises. No order had been made fixing an early closing day for a shop where several different businesses were carried on. The appellants were convicted at a magistrates' court of four offences (one in respect of each of the aforementioned principal businesses) by not closing early on Wednesday:—*Held*, that the orders made by the local authority did not apply to a mixed shop where several different businesses were carried on, and, as the appellants' premises were a single shop and not several shops, the convictions must be quashed. Patrick Thompson, Ltd. *v.* Somerville (1917) S.C. (J.) 3, and MacDonald *v.* Groundland (1923) S.C. (J.) 28, applied. *Per* LORD PARKER, C.J.: Where there is a single hereditament consisting of self-contained premises laid out with counters, the whole of those premises constitutes the shop. (Fine-Fare Ltd. *v.* Brighton County Borough Council. Q.B.D.) ... ... 197

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2. Hours of closing; "place" where retail trade or business carried on; costermonger's barrow; sale in street after closing time; Shops Act, 1950, s. 12.—By s. 12 of the Shops Act, 1950, it is unlawful "to carry on in any place not being a shop" a retail trade or business at a time when it would be unlawful to keep a shop open in the same locality for retail trade or business of the same class. The appellant sold apples from a costermonger's barrow in a street at an hour when it would be unlawful for a shop to be open in the same locality for such sale. The barrow, although then stationary in the street, had no fixed location there. The appellant, who was convicted of an offence against s. 12, appealed:—*Held*, that the conviction must be quashed, as neither the barrow itself nor the piece of ground on which it stood at the time was a "place" where the appellant was carrying on a retail trade or business within the meaning of s. 12. Eldorado Ice Cream Co., Ltd. *v.* Clark (1938) 102 J.P. 147, and Stone *v.* Boreham (1958) 122 J.P. 418, applied. *Per* DONOVAN and SALMON, JJ.: The case of the street hawker is not the case which Parliament had in mind when passing the Shops Acts. (Kahn *v.* Newberry. Q.B.D.) ... ... ... ... ... ... ... 307

3. Sunday closing; multiple business; regulations requiring exhibition of notices; section of Act under which offence should be laid; Shops Act, 1950, s. 47, s. 50, s. 53, s. 55, s. 57.—By s. 47 of the Shops Act, 1950: "Every shop shall, save as otherwise provided by [Part 4] of this Act, be closed for the serving of customers on Sunday". By s. 50 of the Act and the Shops Regulations, 1937 (continued by the Act of 1950), where several trades or businesses are carried on in the same shop, and any of those trades or businesses consists only of certain transactions, the shop may be kept open on Sunday for the purposes of such transactions subject to certain conditions which include the display of notices. The respondent, who was the occupier of a shop at which the retail trade or business of general stores was carried on, was charged at a magistrates' court with having failed to comply with the provisions contained in s. 50 of the Act and the regulations made thereunder, in that notices as required by s. 50 and the regulations were not displayed. The magistrates were of opinion that, if any offence had been committed, it should have been charged as an offence against s. 47 and not against s. 50, and they dismissed the information. On appeal by the prosecutor:—*Held*, that s. 50 was a permissive enactment and did not create any offence, but was in the nature of an exemption from s. 47, which was the section creating the offence, and, therefore, the magistrates were right in dismissing the information on the ground that it had been wrongly laid. *Per* STREATFEILD and DIPLOCK, JJ.: Apart from s. 47, separate offences are created by ss. 53, 55 and 57 of the Act. (Tonkin *v.* Raven. Q.B.D.) ... ... ... ... ... ... 10

T

TOWN AND COUNTRY PLANNING

1. Amenity; injury; abatement; injury by condition of open land; inclusion of land within curtilage of building; Town and Country Planning Act, 1947, s. 33 (1).—By the Town and Country Planning Act, 1947, s. 33 (1), if it appears to a local planning authority that the amenity of any part of the area of that authority is seriously injured by the condition of "any garden, vacant site or other open land" in their area, they may serve a notice on the owner of the land requiring him to abate the injury in the way specified in the notice.

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The plaintiff owned certain land which, from 1939 to 1955, he had used as a sawmill, for which purpose he had erected structures on the land. He used the land surrounding the structures as a sawmill yard. In 1955 he let the land to a company who used it for breaking up vehicles and adapting the component parts for sale. The breaking up of the vehicles was carried out both in the structures and in the surrounding yard. In April, 1957, the local planning authority served on the plaintiff, a notice purporting to be a notice under s. 33 of the Act of 1947, requiring him to move all cars, car bodies and machinery from the "open land within the curtilage" of the premises:—*Held*, on its true construction, s. 33 must be limited to cases where the "garden, vacant site or other open land" was not within the curtilage of a building. (Stephens *v.* Cuckfield Rural District Council. Q.B.D.) ... ... ... ... ... ... 262

2. Development; caravan site; increase of number of caravans; Town and Country Planning Act, 1947, s. 12 (2).—Before July 1, 1948, an acre and a half of land was used as a caravan site for not more than eight caravans at a time. On June 18, 1956, the Minister of Housing and Local Government allowed the use of the site for 21 caravans. Later, the owners increased the number to 28, and the local authority served an enforcement notice on them to discontinue the use in excess of 21. On complaint by the owners the justices quashed the notice on the ground that the increase in number did not constitute a material change of use of the land. On appeal by the local authority, the Divisional Court reversed the decision on the ground that the justices had no power to inquire whether there was a development. On appeal to the Court of Appeal:—*Held*, (applying Eastbourne Corporation *v.* Fortes Ice Cream Parlour (1955) Ltd., *ante*, p. 277) the question whether the increase in number amounted to a development was one of fact for the justices to decide and the Courts could not interfere. (Guildford Rural District Council *v.* Penny and Another. C.A.) ... ... ... ... ... ... 286

3. Development; conditional permission to erect farmworker's cottages; occupation of cottages limited to persons defined by nature of employment, including their dependants; Town and Country Planning Act, 1947, s. 14 (1).—The plaintiffs were the owners of two cottages erected on a site in the Metropolitan Green Belt area in respect of which the defendant council was the local planning authority. In response to an application, dated November 22, 1952, under the Town and Country Planning Act, 1947, by the former owner of the site, the council in a document dated December 5, 1952, gave permission for the erection of a pair of farmworker's cottages on the site subject to the following condition, which they purported to impose under s. 14 (1) of the Act: "The occupation of the houses shall be limited to persons whose employment or latest employment is or was employment in agriculture as defined by s. 119 (1) of the Town and Country Planning Act, 1947, or in forestry, or in an industry mainly dependent upon agriculture and including also the dependants of such persons as aforesaid." The reason for imposing the condition was stated in the document to be because the council would not be prepared to permit the erection of dwelling houses on this site unconnected with the use of the adjoining land for agriculture or similar purposes. At that date there was no development plan for the area which had been approved by the Minister. The council's permission was registered as a local land charge in the register of town planning prohibitions or restrictions, the former site owner

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erected the two cottages, and thereafter they were occupied by persons whose employment came within the terms of the condition. On December 31, 1956, the plaintiffs became owners in fee simple of the two cottages and were now anxious that the cottages should be occupied by persons whose employment did not come within the terms of the condition, but the council maintained that such occupation would constitute a breach of town and country planning law and would render the plaintiffs liable to enforcement proceedings. In an action against the council, the plaintiffs claimed a declaration that the condition was *ultra vires* and of no effect:—*Held*, the condition which the council sought to impose under s. 14 (1) of the Act of 1947 was not one which fairly and reasonably related to the permitted development, and, though imposed *bona fide*, was a mistake in the exercise of the council's statutory powers and was *ultra vires* and void, and, therefore, the Court was entitled to make the declaration claimed. (Fawcett Properties, Ltd. *v.* Buckingham County Council. Ch.D.) ... ... ... ... ... ... ... 54

4. Development; condition; permission to erect farmworkers' cottages; occupation of cottages limited to persons defined by nature of employment, including their dependants; Town and Country Planning Act, 1947, s. 14 (1), s. 36.—A local planning authority gave permission to erect a pair of farmworkers' cottages subject to the condition that the "occupation of the houses shall be limited to persons whose employment or latest employment is or was employment in agriculture as defined by s. 119 (1) of the Town and Country Planning Act, 1947, or in forestry, or in an industry mainly dependent on agriculture, and including also the dependants of such persons as aforesaid." The reason for imposing that condition was stated to be "that the council were not prepared to permit the erection of dwelling-houses on this site unconnected with the use of the adjoining land for agriculture or similar purposes." At the date of the permission there was no development plan relating to the area in operation, but its inclusion in a green belt area was envissaged:—*Held*, the condition, on a fair construction, fairly and reasonably related to the development plan and planning proposals of the local planning authority as required by s. 14 (1) and s. 36 of the Act of 1947; it was not void for uncertainty; and, therefore, it was *intra vires* and valid. (Fawcett Properties, Ltd. *v.* Buckingham County Council. C.A.) ... ... ... ... ... ... ... 322

5. Development; permission; necessity for permission; agreement between quarry owners and local authority as to quarrying areas scheduled to Act of Parliament; development "authorized by local or private Act"; Town and Country Planning General Development Order, 1950 (S.I. 1950 No. 728), art. 3 (1), sch. 1, class xii; Malvern Hills Act, 1924, s. 54, sch. 4; Town and Country Planning Act, 1947, s. 14 (2), s. 17 (1).—In 1924, the appellants, a quarrying company, owned freehold land, and had quarrying rights in other land, in the Malvern Hills. While the Malvern Hills Act, 1924, a local Act for the preservation of the beauties of the Malvern Hills (an area defined in s. 5 of the Act), was passing through Parliament, negotiations took place between the company and the promoters of the bill, the Malvern Conservators and Malvern urban district council. These negotiations resulted in an agreement between the parties that the company should continue to quarry on its freehold land, should surrender its quarrying rights in certain other land, should retain its quarrying rights in the N area, and should have transferred to it

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additional quarrying rights in certain other parts of that area. The terms were embodied in heads of agreement which contemplated a deed being executed subsequently and which were set out in a schedule to the Act. By s. 54 of the Act it was provided that: "For the protection of the [company] . . . the heads of the agreement . . . are hereby confirmed and made binding on [the parties] and the provisions of this Act shall only apply to or affect the undertaking property or rights of the company subject to the provisions of the said heads of agreement". By deed dated December 14, 1925, duly executed by all the parties, the areas in which the company should and should not quarry were defined. On November 17, 1947, the company applied for planning permission to develop for quarrying purposes two of the areas of land agreed for quarrying. One of these areas, the T area, was freehold property of the company, and the other was the N area. On September 30, 1953, the Minister refused permission to work parts of the T area, granted permission to work the remainder of the T area on conditions and only until June 30, 1966, and refused permission for any work in the N area except to the extent necessary to ensure safety. By the Town and Country Planning General Development Order, 1950, art. 3 (1) and sch. 1, class xii, permission was given for "development authorized by any local or private Act of Parliament . . . being an Act . . . which designates specifically both the nature of the development thereby authorized and the land upon which it may be carried out". In December, 1954, the company brought an action against the Ministry of Housing and Local Government and the county council of the administrative county of Worcester for, *inter alia*, a declaration that it was entitled to carry out the proposed development without obtaining any special development permission. The Ministry objected that the court had no jurisdiction to adjudicate whether the company needed to apply for planning permission, contending that the question was exclusively within the Minister's jurisdiction under s. 17 of the Town and Country Planning Act, 1947. It was not disputed that the nature of the development and the land on which it was to be carried out was designated by the Act of 1924, but it was contended that work was not "authorized" by that Act:—*Held*, (i) the company were not confined to the procedure provided by s. 17 of the Town and Country Planning Act, 1947, because s. 17 did not create a new remedy for enforcing a new statutory right but created a means of ascertaining the extent of statutory liabilities, and because the jurisdiction of the court to make a declaration was not ousted without clear words having that effect, and such words were not present in s. 17. Barraclough *v.* Brown (1897) 62 J.P. 275, distinguished; (ii) the effect of s. 54 of the Malvern Hills Act, 1924, was to "authorize" (in the sense of approving or countenancing) the company's working of quarries within the limits of para. 1 of sch. 4 to the Act of 1924 (including authorizing the working of the company's freehold, the T area), and was not merely to make the heads of agreement contractually binding; accordingly the development was permitted unconditionally by art. 3 of the General Development Order, 1950, and no further application for planning permission was needed. R. *v.* Midland Railway Co. (1887) 19 Q.B.D. 540, distinguished. Decision of the Court of Appeal (1958) 122 J.P. 182, reversed. (Pyx Granite Co., Ltd. *v.* Ministry of Housing and Local Government and Others. H.L.) ... ... ... ... ... 429

6. Development value; determination; estate acquired for building purposes; planning permission for development of whole land;

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heavy expenditure necessary to develop part of land; no development value if whole land developed; high value if part only developed; Town and Country Planning Act, 1947, s. 70.—A county council acquired certain land and obtained planning permission to develop the whole of it as a housing estate. Most of the land was suitable for building houses, but on part of it heavy expenditure, exceeding the value of the land as a whole for building purposes, was necessary before houses could be built there. If this part were not developed at all and the rest of the land were developed as permitted, the increase in the value of the land as a whole due to the permission to build would be £22,500. The Central Land Board contended that the county council was at liberty to carry out the development so far as it was profitable and was not obliged to develop the whole of the land, and, accordingly, claimed a development charge of £22,500:—*Held*, the development charge must be assessed on the footing that all the permitted development would be carried out, and, as the value of the land as a whole would not be increased if this were done, no development charge was payable. *Per curiam*: Practice Notes on the working of the Act provided by the Board for its officers are wholly inadmissible for the purpose of construing the Act, and so should neither be considered by the court nor allowed by the court to be read as part of counsel's argument. *Quaere*: whether the manifestation by a developer to carry out part only of the development for which planning permission had been given would be a ground for the revocation of such permission under s. 21 (1) of the Act. (London County Council *v.* Central Land Board. C.A.) ... ... ... ... ... ... ... ... 90

7. Enforcement notice; appeal against notice; jurisdiction of justices to determine whether development has taken place; Town and Country Planning Act, 1947, s. 23 (4).—The appellants, Fortes Ice Cream Parlour (1955), Ltd., placed, without planning permission, an ice-cream sales machine on the forecourt of their premises. An enforcement notice served on them requiring the removal of the machine was quashed on appeal by the justices under s. 23 (4) of the Town and Country Planning Act, 1947, on the ground that there was no development within the meaning of s. 12 of the Act of 1947. On appeal that decision was reversed by the Divisional Court on the ground that the justices had no power to inquire or determine whether there was a development. On appeal to the Court of Appeal:—*Held*, the magistrates' court had jurisdiction to determine whether the matters referred to in the enforcement notice as being development did or did not constitute development. Keats *v.* London County Council (1954) 118 J.P. 548, overruled. Decision of Divisional Court (1958) 122 J.P. 324, reversed. (Eastbourne Corporation *v.* Fortes Ice Cream Parlour (1955), Ltd. C.A.) ... ... ... ... 277

8. Enforcement notice; quashing by magistrates; right of appeal; "person aggrieved"; local authority; no order for costs against, or legal burden placed on, authority; Town and Country Planning Act, 1947, s. 23 (5).—Where an enforcement notice served by a local authority under s. 23 of the Town and Country Planning Act, 1947, has been quashed on appeal by a magistrates' court under subs. (4), and no order for costs has been made against the authority and no legal burden placed on it, the authority is not a "person aggrieved" by the decision of the magistrates' court within the meaning of subs. (5) and so has no right of appeal to quarter sessions. The authority

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does not become a " person aggrieved " merely by reason of the fact that it has been frustrated in the performance of its public duty. (Jones *v.* Ealing Borough Council. Q.B.D.) ... ... ... ... 148

9. Enforcement notice; validity; inaccurate statement of fact; allegation that development was carried out without planning permission; general order giving permission for 28 days; Town and Country Planning Act, 1947, s. 23 (1); Town and Country Planning General Development Order, 1950 (S.I. 1950, No. 728), art. 3 (1), sch. 1, class IV, para. 2.—The appellant was the owner of land which prior to 1954 was used as a smallholding. In that year he began to use the land as a caravan site. An application for permission to use the land for that purpose was refused by the planning authority under the Town and Country Planning Act, 1947, and, on appeal, by the Minister. On December 12, 1956, the planning authority served on the appellant an enforcement notice under s. 23 (1) of the Act of 1947 requiring him within three months to discontinue " the use of the said land comprizing the said development " and stating that " it appears to the [planning authority] that development consisting of a material change of use has been carried out on the land . . . without the grant of permission required in that behalf under part 3 of the Act, the said land being used for the purpose of a caravan site ". By the Town and Country Planning General Development Order, 1950, art. 3 (1) and sch. 1, class IV, para. 2, general permission was given for the " use of any land for any purpose on not more than 28 days in total in any calendar year, and the erection or placing of movable structures on the land for the purposes of that use ". The appellant was convicted at a magistrates' court of using the land for the purpose of a caravan site in contravention of the enforcement notice. On appeal:—*Held*, that the permission afforded by art. 3 (1) of the Order of 1950 and para. 2 of class IV of sch. 1 to the Order was a permission granted under part 3 of the Act of 1947 in relation to the land when the caravans were first brought on to it; that the statement of fact in the enforcement notice was untrue, thereby rendering the notice a nullity; and that, accordingly, the conviction must be quashed. (Cater *v.* Essex County Council. Q.B.D.) ... ... ... ... ... ... ... ... 301

TRESPASS

Sewer; construction on plaintiff's land; oral permission by plaintiff while ignorant of proprietary right; permission revoked after sewer constructed; continued discharge of effluent.—The plaintiff was the owner of a house at the back of which was a private pathway leading from the public highway to premises owned by the defendants. The strip of pathway behind the plaintiff's house, and adjoining the highway, was part of his property. In 1957 the defendants wished to construct a sewer under the pathway from their premises to the public sewer in the highway. Before proceeding with the work, they asked the plaintiff (among others) for his permission. The plaintiff orally raised no objection to the construction of the sewer or to the construction of a manhole on the strip of the pathway which belonged to him, but, at that time, he was not aware that that piece of the pathway was his own property. In August, 1958, the plaintiff, having learned that he was the owner of the strip of pathway where the manhole had been constructed, requested the defendants to remove the sewer and the manhole. The defendants having failed to comply with his request, the plaintiff brought an action against them, claiming damages for trespass and an injunction to restrain the

TRESPASS—*continued* PAGE

further discharge of effluent through the sewer:—*Held*: (i) the plaintiff was not debarred by acquiescence from enforcing his legal rights because he had not known that he owned the strip of land at the time when he gave his assent; but an injunction would, nevertheless, not be granted in aid of his legal right, because any injury to the plaintiff was trivial, and for the same reason the award of nominal damages of 20*s.* was adequate; (ii) the plaintiff's oral assent to the construction of the manhole and sewer was sufficient answer to his claim in trespass, but was not sufficient answer to a claim for discharging effluent through the plaintiff's land, because such a right could not be granted validly by parol, and, if the plaintiff had given a licence permitting the discharge of the effluent, it was not irrevocable and had been revoked by the letter of the plaintiff's solicitors. (Armstrong *v.* Sheppard & Short, Ltd. C.A.) ... ... ... ... 401

W

WEIGHTS AND MEASURES

Coal; exposing for sale sacks with deficiency in weight; weight correct when sacks left employers' premises; subsequent theft by servant; servant brought before court as "actual offender"; *mens rea*; Weights and Measures Act, 1889, s. 29 (2); Sale of Food (Weights and Measures) Act, 1926, s. 12 (5).—The defendant company exposed for sale on a coal lorry 39 sacks of coal, each of which was marked "112 *lbs.* coal". The lorry was stopped by an inspector of weights and measures and 33 of the sacks were found to contain short weight. In each case the weight had been correct when the lorry left the company's premises, and the deficiencies had been caused by theft by C, the company's servant, who was in charge of the vehicle. Informations were preferred by the inspector against the defendant company, charging them with exposing for sale sacks of coal which were of less weight than that represented by the sellers, contrary to s. 29 (2) of the Weights and Measures Act, 1889. The defendant company gave notice under s. 12 (5) of the Sale of Food (Weights and Measures) Act, 1926, and preferred informations against C, alleging that they had used due diligence to enforce the execution of the Act, that C had committed the offence without their consent, connivance or wilful default, and that C was the actual offender. The justices dismissed the informations on the grounds that the defendant company did not know that the representations with regard to weight were false and that the exposing for the sale was the act of C, and not that of the defendant company, C having acted outside the scope of his employment. On appeal by the prosecutor:—*Held*, that the exposure for sale was the act of the defendant company and not an independent act by C; that no *mens rea* was necessary to constitute an offence under s. 29 (2) of the Act of 1889; and that, therefore, the case must be remitted to the justices with a direction to convict. Roberts *v.* Woodward (1890) 55 J.P. 116, distinguished. Twentyman *v.* John Hulbert, Ltd. (1944) 108 J.P. 168 overruled. (Winter *v.* Hinckley & District Co-operative Society, Ltd. Q.B.D.) ... ... ... ... ... 160

Printed by R. J. ACFORD LTD., Industrial Estate, Chichester, and Published by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," 88 Kingsway, London, W.C.2, and Little London, Chichester—*Saturday*, January 30, 1960. Price 2*s.* 0*d.*